



**MASSACHUSETTS BAY
TRANSPORTATION
AUTHORITY**

REQUEST FOR PROPOSALS

RFP NO. 122F-20

**OVERHAUL OF TWO (2)
149-PASSENGER
SUBCHAPTER "T" FERRIES**

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SOURCING EXECUTIVE: AIDAN FLYNN

Table of Contents

1. PROPOSAL INFORMATION	6
1.1. Invitation and Description of Work.....	6
1.2. U.S. Domestic Provisions	6
1.3. Disadvantaged Business Enterprise (DBE) Participation Goal.....	7
1.4. Request for Proposals Timeline.....	7
1.5. MBTA Point of Contact and RFP Communications.....	8
1.6. Evaluation Criteria	8
1.7. Selection and Competitive Negotiation Process	9
1.8. Pre-Proposal Procedures	10
1.9. Preparation and Submittal of Proposals.....	11
1.10. Pre-Contractual Expenses.....	12
1.11. Bidder’s Material Qualification.....	12
1.12. Proposal Opening	13
1.13. Late Submissions, Modifications and Withdrawals of Offers.....	13
1.14. Rejection of Proposals	13
1.15. MBTA Reservation of Rights	13
1.16. Appropriation Contingency	15
1.17. Appeal/Protest Procedures	15
1.18. Rules of Contact.....	15
2. ABBREVIATIONS AND DEFINITIONS	16
2.1. Abbreviations.....	16
2.2. Units of Measure	20
2.3. Definitions	22
3. BUSINESS AND COMMERCIAL REQUIREMENTS	33
3.1. Award and Execution of Contract.....	33
3.2. Insurance Requirements.....	33
3.3. Performance Guarantee	34
3.4. Liquidated Damages	35
3.5. Contractor Responsibility and Legal Requirements	36
3.6. Permits and Licenses	37
3.7. Ongoing Compliance Obligations	37

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

3.8.	Claims	38
3.9.	Disputes	38
3.10.	Claims and Disputes.....	39
3.11.	Examination and Audit	39
3.12.	Inspection of Site(s)	40
4.	SCOPE OF WORK.....	40
4.1.	Intent of Contract	40
4.2.	Warranty.....	40
4.3.	Required Key Contractor Personnel	42
4.4.	Contractor Furnished Facilities	43
5.	CONTROL OF PROCUREMENT.....	44
5.1.	Master Schedule	44
5.2.	Contractor’s Submittals	44
5.3.	Review of Contractor Submittals.....	45
5.4.	Project Photographs	45
5.5.	As-Built Drawings and Schematics	46
5.6.	Contractor Furnished Materials	46
5.7.	Conformity with Specifications.....	46
5.8.	Access to Work and Records	47
5.9.	Assigning or Subcontracting	48
5.10.	Project Meetings	49
5.11.	Communication and Correspondence Control.....	49
5.12.	OEM Software.....	50
6.	CONTROL OF MATERIALS	50
6.1.	Quality of Supply	50
6.2.	Trade Names and Alternatives	51
6.3.	Patented Devices, Materials, Processes	52
6.4.	First Article Inspection and Acceptance	53
6.5.	Inspections and Tests	53
6.6.	Storage of Material and Preparation for Shipment.....	54
6.7.	Receipt and Delivery of Materials and Vehicles	55
6.8.	Acceptance of Vessels	57

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

6.9.	System Support Services and Materials	58
6.10.	Operator and Maintenance Trainings	58
6.11.	Equipment and Special Tools.....	58
6.12.	Spare Parts.....	59
7.	CHANGE ORDERS	60
7.1.	Proposed Changes in Work Scope (Change Orders).....	60
7.2.	Costs for Work Scope Changes	61
7.3.	Change Order Authorization.....	62
7.4.	Executed Change Orders and Amendments.....	62
7.5.	Change Status Report	63
8.	MEASUREMENT AND PAYMENT	63
8.1.	Terms of Payment	63
8.2.	Schedule of Partial Payments for Base Award	64
8.3.	Schedule of Partial Payments for Options.....	67
8.4.	Payment for Change Orders	67
9.	CONTRACT TERMS AND CONDITIONS	68
9.1.	Contract Effective Start Date.....	68
9.2.	Personal Liability of Authority Official.....	68
9.3.	Hiring of MBTA Retirees	68
9.4.	Headings Not Binding	68
9.5.	Binding Effect.....	68
9.6.	Precedence of Documents	68
9.7.	Payments and Compensation.....	69
9.8.	Contractor Payment Mechanism.....	70
9.9.	Contract Termination, Suspension, Force Majeure.....	70
9.10.	Written Notice	72
9.11.	Record-keeping and Retention, Inspection of Records	72
9.12.	Assignment	73
9.13.	Subcontracting By Contractor	73
9.14.	Affirmative Action, Non-Discrimination in Hiring and Employment	73
9.15.	Indemnification.....	74
9.16.	Waivers	74

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

9.17. Risk of Loss.....	74
9.18. Forum, Choice of Law and Mediation	75
9.19. Interpretation, Severability, Conflicts with Law, Integration	75
9.20. Entire Agreement	75
9.21. Contractor Certifications and Legal References	75
9.22. Executive Orders.....	80
9.23. Supplemental Provisions	82
9.24. Federal Requirements	85
9.25. Federal Requirements – Disadvantaged Business Enterprises.....	119
9.26. Terms & Conditions Signature.....	127
10. TECHNICAL RESPONSE	129
10.1. Technical Response Submission	129
10.2. Technical Response Components.....	129
11. PRICE PROPOSAL	135
11.1. Price Proposal Submission.....	135
11.2. Tax Exemption	136
11.3. Price Proposal Components	136

1. PROPOSAL INFORMATION

1.1. Invitation and Description of Work

The Massachusetts Bay Transportation Authority (“MBTA” or “Authority”) invites proposals as set forth herein on a competitive negotiated basis for the provision of the overhaul of two (2) 149-passenger Subchapter “T” ferries and other End Products to including transportation from and to an MBTA facility within the greater Boston, Massachusetts Harbor area. All End Products must be in accordance with Technical Specification RROPS20-01 (“Technical Specifications” or “Specifications”). The Specifications do not purport to be a complete description of work conditions. The Contractor is required to advise MBTA of work conditions noted but not herein defined.

- A. **Base Proposal.** The End Products to be provided by the successful Bidder include the overhaul of two 149-passenger, high speed ferries, Flying Cloud and Lightning – owned by the Massachusetts Bay Transportation Authority (MBTA or “the Authority”). These vessels are used in commuter service between Boston and the South Shore of the Boston region. In addition to the overhaul of the two ferries, End Products include as well as Capital Spares, Manuals, Diagnostic Test Equipment, Special Tools, Training, Training Aids, warranty, and associated materials, equipment, and services. Major project schedule milestones that must be met in the base Proposal include:

1. Delivery of the first overhauled Vessel to the MBTA shall be **no later than 12 Months** from the date on which the first vessel is made available to the Contractor. The second vessel shall be released to the Contractor within ten calendar days of the return delivery, completion of operational testing, and conditional acceptance by the Authority of the first vessel, as noted in Technical Specification Section 987. Delivery of the second overhauled Vessel to the MBTA shall be **no later than 8 months** from the date on which the second vessel is made available to the Contractor.
2. Capital Spare Parts deliveries: Deliveries shall start at acceptance of the first vessel.

- B. **Options.** The following options shall become part of this requirement:

Option 1: Increased Main Cabin Passenger Seating

The MBTA reserves the right within three (3) months of Notice to Proceed to exercise an option for the furnishing, installation and integration of increased passenger seats per the Contractor’s proposal, and in accordance with the requirements of Technical Specification Section 645.2.1.1.

Option 2: Overhaul in Parallel

The MBTA reserves the right to exercise an option at Notice to Proceed to provide both vessels for overhaul at the same time, rather than sequentially.

Bidders shall include in their bid, the cost differential to overhaul the vessels in parallel rather than sequentially, as well as a modified overhaul schedule for this option.

1.2. U.S. Domestic Provisions

This contract may be financed in part by means of a grant under the Urban Mass Transportation Act of 1964, as amended, and administered by the U.S. Department of Transportation, Federal Transit Administration (FTA),

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER "T" FERRIES

under a Capital Grant Contract between the Authority and the United States. The provisions of an FTA funded contract will apply.

All questions concerning the contract between the Authority and the Contractors, including all proposals thereof, shall be governed by and decided according to the law application to government procurement under Capital Grant Contracts. Refer to FTA Circular 4220.1F entitled "Third Party Contracting Guidelines" for details.

Under the FTA Guidelines, the following protest procedures are applicable:

1. The FTA may entertain a protest that alleges that a grantee failed to have or follow its written appeal/protest procedures.
2. A protest must be filed with the FTA no later than 5 days after the protester knows or has reason to know that the grantee has failed to render a final decision.
3. A protest to FTA must be filed in accordance with FTA Circular 4220.1F, as amended.

NOTE: The Authority reserves the right to proceed with the procurement, in spite of the pending protest as set forth in FTA Circular 4220.1F, if such action is deemed in the best interest of the Authority.

1.3. Disadvantaged Business Enterprise (DBE) Participation Goal

This Contract is subject to 49 CFR Part 26. Therefore, the Contractor is strongly encouraged to meet the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The Authority shall make all determinations with regard to whether or not a Proposer's is in compliance with the requirements stated herein. In assessing compliance, the Authority may consider during its review of the Proposer's submission package, the Proposer's documented history of non-compliance with DBE requirements on previous contracts with the Authority.

The DBE participation goal for this Contract is set at **8%**. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than 8%** of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Proposer non-responsive. For the purpose of this Contract, the MBTA will accept only DBE's who are Certified, at the time of Proposal opening, by the Massachusetts Supplier Diversity Office (SDO) (formerly SOWMBA) as DBE's. (See Section 9.25)

1.4. Request for Proposals Timeline

RFP Release: **December 4, 2020**

Pre-Proposal Conference: **December 15, 2020**

Request for Clarification **Deadline: February 3, 2021**

Proposal Due Date: **February 24, 2021**

The MBTA reserves the right to modify this timeline.

Requests for an extension of the Proposal Due Date must be submitted in writing, via email to vehicles@mbta.com with RFP 122F-20 in the subject line, to the attention of the Sourcing Executive **no later than ten (10) business days prior to the Due Date**. The MBTA reserves the right to determine whether to accept such requests. All Bidders will be notified through COMMBUYS of any extension granted.

1.5. MBTA Point of Contact and RFP Communications

MBTA’s Procurement and Logistics Department will be the sole contact for prospective Bidders during the Proposal process. It will coordinate and direct all managerial, administrative, and technical processes and decisions.

The RFP Notice will be posted on the Commonwealth of Massachusetts’ COMMBUYS site, www.commbuys.com as Bid Number <<COMMBUYS bid number goes here>>. At the MBTA’s discretion, information regarding the proposal may be posted at other sites. Bidders interested in submitting a Proposal in response to this RFP can obtain RFP 122F-20 documents and copies of Technical Specification RROPS20-01 via the COMMBUYS website.

The MBTA’s Contracting Officer and point of contact for this RFP is Aidan Flynn, Sourcing Executive, at aflynn@mbta.com. Each Bidder must designate one individual to function as a point of contact with MBTA during the pre-Proposal period to facilitate communications and receipt of RFP documents and addenda, if issued.

1.6. Evaluation Criteria

The Evaluation Criteria are:

1. Technical Proposal, including in relative order of importance:
2.
 - a. **Technical Approach** – This criterion considers the Offeror’s approach toward the overhaul of the vessels under this Contract, including organization, staffing, sequence, interface among the various design disciplines and subcontractors, analytic techniques and testing. It considers, in particular, the Offeror’s approach with regard to system integration, industrial design and reliability. As an indication of the Offeror’s general understanding of the requirements of the technical specifications, this criterion includes a review of the Offeror’s approach to repairs, replacement or redesign of key vessel components, subsystems and features detailed in the Technical Specification. This criterion also assesses the capabilities of the designated management and technical team to perform the necessary duties associated with their respective roles within a project of similar scope as evidenced by work on past successful projects of similar scope.
 - b. **Manufacturing Plan & Schedule** – Manufacturing plan addresses the manufacturing capacity, schedule and logistics for the overhaul of the vessels. Considerations include the overall approach to stripping of the vessels, storage of removed material, inspection of the hulls, manufacturing and assembly of vessel components and sub systems, the approach to re-assembly, the available plant capacity, personnel and other resources to perform the work, proposed subcontractors, the methods of transportation between the Authority and the Contractor’s/Subcontractors’ various work locations, and the Offeror’s plans for local coordination with, and support to, the Owner. The Owner may elect to perform site inspections as part of the evaluation process to confirm some of this information.
 - c. **Past Performance & Experience**– Past performance considers the performance of the Offeror and major subcontractors in previous vessel overhaul and procurement contracts, preferably for this type of vessel and/or for vessels of a similar type, including fiberglass hulls. It addresses contractual issues, technical capability, quality of work, on-time delivery, vehicle performance, and follow-on support services. The Owner may contact previous customers and offerors and major subcontractors to collect this information.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

- d. **Quality Assurance Plan** – This criterion addresses the Offeror’s commitment to, and execution of a thorough and effective quality assurance program for this Contract. It considers the existence and role of quality assurance in the overall organization, procedures established to monitor and remedy the quality of materials and workmanship in-house and by subcontractors, and provisions for appropriate documentation with the foregoing. The quality assurance Plan shall include an inspection and test plan.

3. Total Proposal Price, including price for Option 1, and Option II.

Award will be made to the Bidder who furnishes the Proposal, which in the opinion of the MBTA, provides the best value, meaning it is offered at a fair and reasonable price and it offers services and equipment best suited for the MBTA’s requirements from a contractual and technical standpoint.

1.7. Selection and Competitive Negotiation Process

Proposals will be evaluated and awarded on a best value, competitive negotiated basis as described below. MBTA may request Bidder clarification of any minor informalities, irregularities, and apparent clerical mistakes. Any changes to the Response shall be evaluated at MBTA’s sole discretion.

- A. **Confidentiality:** All information received from each Bidder will be treated as confidential information and will not be distributed prior to Contract execution, other than for the purpose of evaluation of the Proposal. Bidders are advised that all Proposals received are subject to the Massachusetts Public Records Law, G.L.c.66.
- B. **Technical Response Responsiveness Review:** MBTA reserves the right, in its sole discretion, to determine if a Proposal is responsive and the Bidder is responsible. In determining whether a Bidder has the ability to perform successfully under the terms and conditions of the proposed procurement, MBTA will consider such matters as the Bidder’s integrity, compliance with public policy (e.g., EEO record, debarment status, etc.), record of past performance, and financial and technical resources.

Upon receipt, Technical Responses will be reviewed for responsiveness to the RFP requirements, including (i) deficiencies and minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the Response; (ii) conformance to the RFP instructions regarding organization and format; and (iii) the responsiveness of the Bidder to the requirements set forth in this RFP.

Those Technical Responses not responsive to this RFP may, at MBTA’s sole discretion, be excluded from further consideration and the Bidder will be so advised.

- C. **Technical Proposal Evaluation:** Each Technical Evaluation Criterion will be evaluated by considering all information included in the Technical Proposal related to the criterion. This evaluation may, at MBTA’s sole discretion, include requests for additional written information or clarification from any Bidder to assist in evaluation, including oral interviews, and references.

MBTA may, at its own expense and upon reasonable notice, visit and inspect current operations of the Bidder and/or any proposed subcontractors, including the premises, facilities, equipment, personnel and other resources, and carry out related appraisals as part of the Response evaluation.

Technical Proposals will be ranked, and those that most closely align with MBTA’s Evaluation Criteria will advance to the Price Proposal Evaluation. MBTA, in its sole discretion, reserves the right to limit the

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

number of Proposals that are advanced to a Price Proposal Evaluation to those that MBTA deems most responsive to MBTA’s requirements.

- D. **Price Proposal Responsiveness Review:** Price Proposals will be reviewed for responsiveness to RFP requirements, including (i) deficiencies and minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the Response; (ii) conformance to the RFP instructions regarding organization and format; and (iii) the responsiveness of the Bidder to the requirements set forth in this RFP.

Those Price Proposals not responsive to this RFP may, at MBTA’s sole discretion, be excluded from further consideration and the Bidder will be so advised.

- E. **Price Proposal Evaluation:** This evaluation may include requests for additional written information or clarification from any Bidder to assist in evaluation.

- F. **Competitive Negotiation:** A decision is made to:

1. Move to Contract. MBTA may elect to award a Contract without negotiation.
2. Reject all Proposals in the best interest of MBTA.
3. Negotiate with Bidders within the competitive range and with compliant Proposals. The competitive range includes all Proposals which have a reasonable chance of being selected for award. If negotiation is used:
 - a. Each Bidder is formally notified in writing either that its Proposal is compliant and within the competitive range and when negotiations with that Bidder will commence, or that its Proposal is not compliant or not within the competitive range and is excluded from further consideration.
 - b. The Contracting Officer determines whether negotiations will be conducted by written correspondence or by oral discussion. All meetings are held individually under the direction of the Contracting Officer.
 - c. As part of negotiations, Bidders within the competitive range may modify their original Proposal and submit a revised Proposal or Best and Final Offer (BAFO), as directed by MBTA, by a common due date.
 - d. Competitive Negotiation steps are repeated as required.

- G. **Best Value Determination:** MBTA will, in its sole discretion, determine which Proposal or Proposals represents the “best value” based on an analysis of the results of the Technical Proposal Evaluation and the Price Proposal Evaluation.

1.8. Pre-Proposal Procedures

- A. **Pre-Proposal Conference.** A virtual conference will be held on December 10, 2020 at 11:00 a.m. EDT. Attendees will need to preregister via e-mail with Aidan Flynn, Sourcing Executive, at vehicles@mbta.com to arrange access to the conference.
- B. **Requests for Clarification (RFCs).** RFCs should be submitted using Attachment 1: Request for Clarification and sent by email to vehicles@mbta.com. The email subject line must be “RFP No. 122F-20 RFC” and the RFC document must be attached.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

1. Only one question/clarification may be submitted per page on the RFC form.
 2. All Requests for Clarifications (RFCs) must be submitted by the date listed in Section 1.4.
 3. MBTA has no obligation to respond to RFCs.
- C. **Contract Document Revisions.** If MBTA determines an issue or Request for Clarification warrants a response or a change to the Contract Documents, it will issue an Addendum. Any interpretation or revision to Contract Documents will be made only by an Addendum.
1. Addenda will be numbered sequentially and made available to Bidders on COMMBUYS.
 2. The Bidder must acknowledge receipt of each Addendum by writing the Addendum number and date in the space provided on the Proposal Form and submitting the executed Form with their Proposal.
 3. No officer, agent, or employee of the MBTA is authorized to amend any provision contained in this RFP, including the specifications, unless such amendment is issued as an Addendum.
 4. Oral explanations or instructions are not binding.
 5. MBTA reserves the right to revise or amend the Contract Documents in its best interests.

1.9. Preparation and Submittal of Proposals

A. **General.** Proposals must be submitted as follows:

- a. Each Bidder must submit its Proposal electronically, in accordance with all instructions and guidelines, via COMMBUYS **no later than 4:00 p.m. EST, February 24, 2021.**
 - a. It is the Bidder’s responsibility to correctly submit all Proposal documents in COMMBUYS prior to the due date.
 - b. The Proposal will be valid for one hundred (100) business days from the Proposal due date. If MBTA requires additional time for review, MBTA reserves the right to extend the validity of the Proposal in increments of sixty (60) business days. Prices submitted remain in effect as originally submitted.
- b. The Price Proposal must be a completely separate and clearly labeled file. No price information may be included in any part of the Technical Response.
- c. As described in Section 10.2, a certified copy of resolution, by-law, or Power-of-Authority authorizing an Officer or Agent to sign on behalf of the Bidder must accompany the Proposal and any Contract which may ensue. All Proposals, Technical and Price, must be signed correctly with ink in the proper places provided. See Sections 10 & 11 for additional requirements. Scanned copies should be provided through COMMBUYS, with the original documents available upon the request of the MBTA.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

B. Technical Response.

- a. Contractual Information. The Bidder must utilize and fully complete all Proposal forms included in this RFP and listed in Sections 10 and 11, specifically Attachments 2, 3, 4, and 5.
- b. The Bidder must meet all minimum requirements of the Contract Documents, including the components of Technical Response. The Bidder may, however, exceed the minimum requirements and may submit additional information describing its Proposal, within defined page limits.

C. Price Proposal.

- a. **Price Proposal.** Using Attachment 5: Price Proposal as specified in Section 11, the Bidder must specify a unit price in US dollars for each item for which a quantity is given.
 - a. The prices for any item, proposed and contracted for, unless otherwise noted or specified, must include full compensation for all materials, equipment tools, labor, and incidental work necessary to complete the items to the satisfaction of the MBTA.
 - b. All prices must be net, not subject to discount, and must include all royalties and costs arising from patents, trademarks, and copyrights involved in any way with the work.
 - c. The Price Proposal must include the cost of all applicable taxes, customs, duties, freight/transportation, and insurance for Delivery of Vehicles and all End Products.
 - d. The Price Proposal must be based upon the Schedule of Partial Payments described in Sections 8.2 and 8.3.
 - e. The Bidder's submittal must be prepared as if it is a Best and Final Offer. MBTA may award this Contract without negotiation if it determines it has received the best value Proposal in accordance with the Contract Documents.

1.10. Pre-Contractual Expenses

- A. MBTA will not be liable for any pre-contractual expense incurred by the Bidder, including but not limited to:
 1. Preparing its Proposal in response to this RFP;
 2. Attending the Pre-Proposal Conference;
 3. Submitting its Proposal to MBTA;
 4. Discussing or negotiating with MBTA any matter related to this Proposal; or
 5. Any other expenses incurred by the Bidder prior to any date of Award.
- B. The Proposal must not include any such expense as part of its Proposal price.

1.11. Bidder's Material Qualification

- A. It is the responsibility of the selected Bidder (Contractor) to furnish complete End Products, materials and specialties of the type, design, and performance to result in integrated, operating End Product units and/or systems in accordance with the Technical Specifications.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

- B. The selected Contractor is fully responsible for the satisfactory delivery and operation of all equipment and materials covered by the contract Documents, whether manufactured by the Contractor or manufactured by a Subcontractor.
- C. The selected contractor must furnish evidence, if required by the Engineer, that equipment of comparable rating (or higher) to that which the Contractor proposed to furnish, has been in satisfactory operation in similar applications. This provision will not apply to materials supplied by MBTA.

1.12. Proposal Opening

There will not be a public opening of Technical Responses or Price Proposals.

1.13. Late Submissions, Modifications and Withdrawals of Offers

Any offer received at the Procurement and Logistics Department after the exact time specified for receipt as designated in Section 1.4 (Due Date) will not be considered.

Any modification of an offer, except a modification for “best and final” offer, is subject to the same conditions stated in Section 1.14.

Notwithstanding the above, a late modification of any otherwise successful offer that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.

Proposals may be withdrawn by written notice to the Authority, or in person by the Bidder or an authorized representative of the Bidder at any time before award.

1.14. Rejection of Proposals

- A. Any Proposal not in conformity with the requirements of MBTA as described in the Contract Documents may be rejected. MBTA reserves the right to reject any or all Proposals.
- B. Proposals which fail to meet the requirements of Section 1.4, are incomplete, include modifications to the RFP specifications, terms and conditions, or which change the intent of this RFP are prohibited and may disqualify a Proposal.
- C. More than one Proposal from the same Bidder, whether the same or different names appear on the signature page, will not be considered.
- D. MBTA reserves the right to waive minor irregularities, errors, or technicalities in Proposals.

1.15. MBTA Reservation of Rights

In connection with this RFP, the MBTA reserves to itself all rights (which rights shall be exercisable by the MBTA in its sole discretion) available to it under applicable laws, including without limitation, with or without cause and with or without notice, the right to:

1. Modify the RFP process in its sole discretion to address applicable law and/or the best interests of the MBTA.
2. Develop the work to be performed under the Contract in any manner that it, in its sole discretion, deems necessary. If the MBTA is unable to negotiate a Contract to its satisfaction with a Bidder, it may negotiate with the Bidder with the next highest ranked proposal, terminate this RFP and pursue other developments or solicitations relating to the work to be performed under the Contract, or exercise such other rights under the provisions of Massachusetts law as it deems appropriate.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

3. Cancel this RFP in whole or in part at any time prior to the execution by the MBTA of a Contract, without incurring any cost, obligations, or liabilities.
4. Issue a new Request for Proposals after withdrawal of this RFP.
5. Not select any Bidder or cancel this procurement.
6. Reject any and all submittals and Responses received at any time.
7. Modify all dates set or projected in this RFP.
8. Suspend and terminate Contract negotiations at any time, and engage in negotiations with the Bidder with the next highest ranked proposal if negotiations are unsuccessful with the apparent successful Bidder.
9. Issue addenda, supplements, and modifications to this RFP.
10. Require confirmation or clarification of information furnished by a Bidder, require revised or additional information from a Bidder concerning its Response, and require additional information to clarify the Response submitted in response to this RFP.
11. Conduct presentations with Bidders, identify a short-list of Bidders, and conduct on-site visits at Bidder facilities.
12. Declare a competitive range, conduct discussions, and request Response revisions and best and final offers.
13. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP.
14. Add or delete Bidder responsibilities from the information contained in this RFP.
15. Waive non-material deficiencies in a Response, accept and review a non-conforming Response, or permit clarifications, revisions, or supplements to a Response.
16. Negotiate with a Bidder without being bound by any provision in its Response, or choose to award and/or execute the Contract without negotiations.
17. Disqualify any Bidder that changes its submittal without MBTA approval.
18. Disqualify any Bidder under this RFP for violating any rules or requirements of the procurement set forth in this RFP or in any other communication from MBTA.
19. Delay issuance of notice to proceed after execution of the Contract.
20. Conduct all or any portion of the Scope of Work itself.
21. Exercise any other right reserved or afforded to the MBTA under this RFP.

This RFP does not commit the MBTA to enter into a Contract or proceed with the procurement described herein. The MBTA assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP.

In no event shall the MBTA be bound by, or liable for, any obligations with respect to the work to be performed under the Contract until such time (if at all) as the Contract, in form and substance satisfactory to the MBTA, has been executed and authorized by the MBTA and, then, only to the extent set forth therein; provided, however, that the foregoing disclaimer in this sentence shall not apply to the obligations of the MBTA to the Bidders during the

procurement process, which obligations are expressly set forth in this RFP. In submitting a Response to the RFP, each Bidder is specifically acknowledging these disclaimers.

1.16. Appropriation Contingency

MBTA intends to seek federal funds for this Contract. If MBTA fails to attain federal assistance at any time, this Contract may not be awarded or may be terminated.

1.17. Appeal/Protest Procedures

Appeals/protests relative to this procurement will be reviewed and adjudicated in accordance with the MBTA's Appeals/Protest Procedure - Goods & Services. A copy of this procedure is available at www.mbtta.com. In the event that this procurement is federally funded with financial assistance from the Federal Transit Administration (FTA), interested parties may elect to issue a protest to the FTA if the interested party believes that the MBTA failed to follow the protest procedures identified above after exhausting MBTA's appeals and protest procedure. These parties must exhaust all appeals and protest procedures with the MBTA first. Such protests to the FTA must be filed in accordance with FTA Circular 4220.1F, Chapter VII.

1.18. Rules of Contact

Starting on the date the RFP is issued and ending on the earliest of (a) the award and execution of the Contract, (b) rejection of all Responses by the MBTA, or (c) cancellation of the procurement, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, email, or formal written communication.

The specific rules of contact are as follows:

1. No Bidder, or any of its team members, may communicate with another Bidder or its team members with regard to this RFP or either team's Response, except that subcontractors that are shared between two or more Bidder teams may communicate with their respective team members so long as those Bidders establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams. This prohibition does not apply to public discussions regarding the RFP at any MBTA sponsored Bidders' conferences.
2. No Bidder or representative thereof shall have any ex parte communications regarding the RFP, the Contract, or the procurement described herein with any member of the MBTA's Fiscal and Management Control Board ("FMCB"), the Massachusetts Department of Transportation ("MassDOT") Board of Directors, or with any MassDOT or MBTA staff, advisors, contractors, or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance at the MBTA's Point of Contact's sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP, Contract, or procurement or from participation in public meetings of the MBTA FMCB or MassDOT Board of Directors or any public or Bidder workshop related to this RFP.
3. The Bidders shall not contact employees, representatives, and employees or other representatives of STV, Inc., WS, Inc., Marine Systems Corporation regarding this RFP, the Contract, or the procurement.
4. Any communications determined by the MBTA, in its sole discretion, to be improper shall result in disqualification.
5. Any official information regarding this RFP will be disseminated from the MBTA's Point of Contact via COMMBUYS.

6. The MBTA will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

2. ABBREVIATIONS AND DEFINITIONS

2.1. Abbreviations

Wherever the following abbreviations are used in these Contract Documents or on the Plans, they are to be construed the same as the respective expressions represented:

AA	Aluminum Association
ABS	American Bureau of Shipping (classification society)
ADA	Americans with Disabilities Act
ADAAG	ADA Accessibility Guidelines, latest revision
AIS	Automatic Identification System
AFI	Air Filter Institute
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute (formerly ASA and USASI)
APA	American Plywood Association (formerly Douglas Fir Plywood Association)
API	American Petroleum Institute
APTA	American Passenger Transportation Association
ASA	American Standards Association
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASNT	American Society for Non-Destructive Testing
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing and Materials
ATA	Air Transportation Association of America
AWG	American Wire Gauge
AWPA	American Wood Preserving Association
AWS	American Welding Society

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

BLS	Bureau of Labor Statistics
CCTV	Closed Circuit TV
CFR	Code of Federal Regulations
CHT	Sewage Tank “Collection & Holding Tank”
CMR	Code of Massachusetts Regulations
COI	Certificate of Inspection
CONTRACTOR	(same as YARD or SHIPYARD)
CONTRACT	Construction Contract between the Owner and the Contractor including these Specifications
CuNi	Copper Nickel Alloy
CRES	Stainless Steel (SST)
DGPS	Differential Global Positioning System
DFT	Dry Film Thickness
DNV	Det Norske Veritas (classification society)
DOJ	U.S. Dept. of Justice
DOT	U.S. Department of Transportation
DTE	Department of Telecommunications and Energy (formerly DPU), Commonwealth of Massachusetts
DWG	Contract Drawing or Drawings
E-LIGHT	Light on Emergency Lighting Circuit
ECM	Engine Control Module
EDM	Electronic Display Module
EIA	Electronic Industries Association
EPA	Environmental Protection Agency
EPIRB	Emergency Position Indicating Radio Beacon
ER	Engine Room
FAR	Federal Acquisition Regulations
FCC	Federal Communications Commission

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

FDA	Federal Drug Administration of the United States Department of Health and Human Services
FO	Fuel Oil (in US gallons)
FMVSS	Federal Motor Vehicle Safety Standards
FPR	Federal Procurement Regulations
FRP	Fiber Reinforced Plastic
FTA	Federal Transit Administration (formerly UMTA)
FW	Freshwater (in US gallons)
GPM	Gallons per Minute
HP	Horsepower
HVAC	Heating, Ventilation, and Air Conditioning
IBA	Inflatable Buoyant Apparatus
ICC	Interstate Commerce Commission
ICEA	Insulated Cable Engineers Association
IEC	International Electrotechnical Commission
IEEE	Institute of Electrical & Electronics Engineers
IES	Illuminating Engineering Society
IPCEA	Insulated Power Cable Engineers Association
ISO	International Standards Organization
ITC	International Tonnage Commission
JCM	Jet Control Module
JIC	Joint Industrial Council
JR	Jet Room
LAHT	Low Alloy High Tensile Strength (Steel)
LCG	Longitudinal Center of Gravity
LT	Long Ton - 2240 Lbs.
MAAB	Massachusetts Architectural Access Board

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

MassDOT	Massachusetts Department of Transportation
MBTA	Massachusetts Bay Transportation Authority
ME	Main Engine
NVIC	Navigation and Vessel Inspection Circular
OCMI	Officer in Charge of Marine Inspection
MARPOL	International Convention for Prevention of Pollution from Ships
MIL	Military Specification
MSC	Marine Safety Center, USCG (Washington, DC)
MSO	Marine Safety Office, USCG
NBS	National Bureau of Standards
NCA	Noise Criterion, Alternate
NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Association
NFPA	National Fire Protection Association
NIST	National Institute for Standards and Testing
NUC	Not Under Command
OEM	Original Equipment Manufacturer
OF or OFE	“Owner Furnished” or “Owner Furnished Equipment” (MBTA Furnished or MBTA Furnished Equipment)
OWNER	see “MBTA”
P	Port
PFD	Personal Flotation Device
PLC	Programmable Logic Controllers
PMCG	Proposal Modification and Clarification Guidelines
POC	Point of Contact
P&S	Port and Starboard
QA	Quality Assurance

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

QAWT	Quick Acting Watertight
RFP	Request for Proposals
RMSH	Reliability, Maintainability, Safety and Human [Factors] (Execution Plan) Starboard
SDO	Supplier Diversity Office/Commonwealth of Massachusetts (formerly SOWMBA)
SEAL WELD	Structure which is double continuously welded
SIC	Standard Industrial Code, U.S. Department of Labor
SNAME	Society of Naval Architects & Marine Engineers
SST	Stainless Steel (CRES)
SW	Saltwater
SWBS	Ship Work Breakdown Structure (numbering system)
TSC	Transportation Systems Center, DOT
TWIC	Transportation Workers Identity Card
UL	Underwriters Laboratories
USCG	United States Coast Guard
USG	U.S. Gallons
USPHS	United States Public Health Service
UV	Ultra-violet
VCG	Vertical center of gravity
VESSEL	Ship under contract
WTD	Watertight Door(s)
YARD	Contracting Shipyard (same as Contractor)
USPHS	United States Public Health Service of the United States Department of Health and Human Services

Note: Any Abbreviation or Acronym standard or code referenced shall act in conjunction with Technical Specification RROPS20-01, Section 002.

2.2. Units of Measure

Wherever the following units of measure are used in the Contract Documents or on the Plans, they are to be construed the same as the respective expressions represented.

μm	Micrometer
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RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

μPa	Micropascal
μV	Microvolt
A	Ampere
BTU	British Thermal Unit
C	Celsius
cm	Centimeter
dB	Decibel
dBA	Decibel on the 'A' Weighted Scale
F	Fahrenheit
fps	Frames Per Second
g	Gram; Acceleration Due to Gravity (9.81 m/s ²)
GB	Gigabyte
GHz	Gigahertz
Hz	Hertz
K	Kelvin
kg	Kilogram
kg/min	Kilograms Per Minute
kHz	Kilohertz
kJ	Kilojoule
km	Kilometer
km/h	Kilometers Per Hour
kN	Kilonewton
kPa	Kilopascal
kW	Kilowatt
L	Liter
L/s	Liters Per Second
m	Meter
m/s	Meters Per Second
m/s ²	Meters Per Second Squared
m/s ³	Meters Per Second Cubed
m ³	Cubic Meter
mA	Milliampere
mH	Millihenry
MHz	Megahertz
mm	Millimeter

mm/h	Millimeters Per Hour
mm/m	Millimeters Per Meter
mm/s	Millimeters Per Second
mOhm	Milliohm
MPa	Megapascal
mph	Miles Per Hour
ms	Millisecond
mT	MilliTesla
mV	Millivolt
N	Newton
N-m	Newton-meter
Pa	Pascal
pphm	Parts per Hundred Million
ppm	Parts per Million
rad/km	Radian Per Kilometer
RH	Relative Humidity
rpm	Revolutions per Minute
s	Second
V	Volt
Vac	Volt Alternating Current
Vdc	Volt Direct Current
W	Watt

2.3. Definitions

DEFINITIONS

Wherever the following terms are used in the Specifications or on the Plans, the intent and meaning shall be interpreted as follows:

1. Whenever in the Specifications or on the Plans the words "acceptable", "approval", "approved", "authorized", "condemned", "considered-necessary", "deemed necessary", "designated", "determined", "directed", "disapproved", "established", "given", "indicated", "insufficient", "ordered", "permitted", "rejected", "required", "reserved", "satisfactory", "unacceptable", "unsatisfactory", or words of like import are used, it shall be understood as if such words were followed by the words in writing, "by the Engineer" or "to the Engineer", unless otherwise specifically stated.
2. Wherever the word "indicated" is used, it shall be understood to mean "as described in the Specifications," "as shown on the contract Plans", or "as required by the other Contract Documents."

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER "T" FERRIES

3. Wherever the words "provided", "supplied", or "installed" are used in the Specifications in reference to work to be performed by the Contractor, it shall be understood to mean "furnished, installed, integrated and delivered complete in operational condition".

Acceptance	(As applied to a vessel or other physical asset) The transfer of ownership of a vessel or other physical asset from the Contractor to the Owner.
Acceptance	(As applied to design information, technical documentation or similar intellectual property) Reviewed for conformity to Specification and accepted, in writing, by the Owner.
Accepted Equal , or Equal	Whenever the words "accepted equal" or "equal" are used in connection with material or equipment in these Contract Documents including the Specifications, the proposed alternative shall be functionally compatible with and of equal or better quality than the item it proposed to replace. The Engineer's decision as to whether any material or equipment proposed is equal to that specified shall be binding on both the Owner and Contractor.
Addendum/(Addenda)	A written interpretation, revision, supplement, or addition to any of the Contract Documents.
Advertisement	The invitation to offer a proposal for work to be performed or materials to be furnished.
Approval	The endorsement or authorization in writing by the Owner of a proposal, plan, procedure, action, document, report, specification, design, or any parts thereof; undertaken, promulgated, or developed by the Contractor in accordance with the requirements of the Contract Documents. "Approved" does not relieve the Contractor from performing the requirements of the Contract Documents.
Approved Equal	See Accepted Equal.
Approved or Approved Type	Design, type of material, procedure, or method given approval by the Owner. See the Technical Specification for additional information regarding the Owner's disposition of submitted information.
Authority, or MBTA	Massachusetts Bay Transportation Authority, created by Chapter 563, Section 18 of the Acts of 1964 of the Commonwealth of Massachusetts, the party of the First Part to the Contract.
Authorized Signee	The person who is executing the Contract on behalf of the Offeror/Contractor and who is authorized to bind the Offeror/Contractor.
Baseline Design	The design of the vessel overhaul, or any of its components, apparatus, systems, sub-systems, or materials which has received both design review approval and first article approval by the Owner.
Basic or Manufacturer's Standard	Shall mean the component or part standard to be acceptable as part of the line-produced by the Contractor.
Bid Form	See Proposal Form

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

Bidder(s)	See Offeror.
Buyer	See “Owner”.
Calculations	Numerical computations performed to demonstrate compliance with the Specifications, technically substantiate a design or position or otherwise show due technical diligence.
Change Order	(See Section 7). A Contract Document executed by the Owner and issued to the Contractor amending the Contract Provisions and/or Specifications. The change order establishes the basis for payment and time adjustments, if any, of the work affected by the changes. The Document becomes a part of the Contract when executed by the Contractor and the Owner. All terms and conditions of the Contract Documents including the Specification remain as previously stated unless so noted in the text of the change order.
Chief Procurement Officer	Chief Procurement Officer for the Massachusetts Bay Transportation Authority, an official designated by the Authority to administer Contracts and make related determinations and findings such as executing Contracts and Change Orders.
Commonwealth	State of Massachusetts.
Conceptual Drawings	Plans and initial set of drawings showing the general vessel layout and arrangement of the overhauled vessel.
Conditional Acceptance	The act of a formal written conditional acceptance by the Owner that all work, or legal obligations, or a specific portion thereof, under the Contract has been satisfactorily completed; provided the Contractor incorporates and complies with all of the Owner’s comments. The vessel(s) remains conditionally accepted until it is fully compliant to the Contract requirements and corrective actions(s) implemented to the Owner’s satisfaction.
Consultant or Consulting Engineer	The engineering design consultant (firm) retained by the Owner to assist the Owner's Engineer in the preparation of Plans and Specifications, proposal evaluation, review of Contractor-furnished drawings and documents, to furnish advice and assistance during the course of the procurement, and to furnish in-plant inspection services.
Contract	The written agreement executed between the Owner, Party of the First Part, and the Contractor, Party of the Second Part, setting forth the obligations of the Parties thereunder, the performance of the procurement as indicated in the Contract Documents and all authorized changes to this Contract issued subsequent to the execution of the Contract.
Contract Amendment	See "Change Order".
Contract Bond	The Performance Bond executed by the Contractor and his surety or sureties, guaranteeing performance of the Procurement in accordance with the Contract and all subsequent agreements.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

Contract Documents	All documents that make up the Contract, including but not limited to, the Request for Proposal (RFP) terms and conditions, scope of work, specifications, addenda and Proposal Modification and Clarification Guidelines (PMCG), drawings, reference materials, contractor’s proposal, change orders issued subsequent to the execution of the Contract, etc..
Contract Term	The number of days allowed for completion of the Contract.
The Authority’s authorized Technical Representative	A designated representative of the Owner, responsible for technical issues on behalf of the Owner.
Contractor	The Prime Contractor solely responsible to the Owner for the quality and proper functioning of the vessel(s) and all components; the person or persons, firm, partnership, corporation, or combination thereof which has entered into this Contract with the Owner to supply the vessel(s). Same as Yard or Shipyard.
Contractor's Drawings	Items such as general arrangement drawings, detail drawings, engineering specifications, purchasing documents, graphs, diagrams, and sketches which are prepared by the Contractor to detail and define its work.
Contribution	Input to a Deliverable (whether such input is in written, oral, electronic, or other form) that embodies (i) a protectable Intellectual Property Right of the party making the Contribution, or (ii) a protectable Intellectual Property Right of a licensor to the party making the Contribution.
Days	Shall mean calendar days, unless otherwise designated.
Days, Worked or Working	Those calendar days during which regular business is conducted, excluding Saturdays and Sundays and all Owner-observed Federal, State, and municipal holidays.
Defect	The condition of any part of the Work that does not meet the Contract Document requirements; causes a Vessel or a portion of the Work to cease operating or operate in a degraded mode; or inflicts damage or harm on any other portion of a Vessel or the Work, or endangers public safety.
Delivery	The Contractor’s act of making a ferry available for Owner acceptance on its property and unrestricted use in revenue.
Delivery Point	The location on the Owner’s property to which the end products are expected to be delivered. For purposes of this Contract, the delivery point(s) will be a marine facility designated by the Owner within the Boston region
End Product	The Contract item(s) to be purchased by the Owner in accordance with the Contract Documents. End Product(s) includes, but it not limited to, drawings, specifications, instructions, books, education programs, spare parts and/or services.
Engineer	An authorized representative of Authority acting within the scope of the assigned duties.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

Equal	See Accepted Equal.
Fail-Safe	A design principle of a system or hardware configuration that ensures that a failure shall not result in an unsafe condition.
Failure	Any detected inability of material or equipment, or any portion thereof, to function or perform in accordance with the Contract Documents.
Failure Rate	The frequency of failure, expressed as failures per hour or failures per distance. Failure rate is the mathematical reciprocal of MTBF or MDBF.
Ferry	A vessel used for regularly scheduled commercial passenger service over a short distance.
Final Acceptance of Vessels	When all corrective actions and retrofit (if any) have been fully completed, and the vessel is considered by the Owner to be fully compliant with the Contract.
Final Acceptance	See Acceptance.
Final Assembly	Installation and interconnections of propulsion control equipment, propulsion cooling equipment, energy sources for auxiliaries and controls, heating and air conditioning, communications equipment, motors, hulls and structures; the inspection and verification of all installation and interconnection work; and the testing in plant of the stationary product to verify all functions.
First Article Acceptance	The physical examination, acceptance, and commercial testing of, and acceptance by the Owner of an initial part, major assembly, subassembly, system, subsystem, apparatus, or material, manufactured or assembled by either the Contractor or Subcontractors. Although the exercise of First Article Acceptance shall be at the Owner's option, the Contractor shall assume that the Owner shall subject all of the above to first article examination and acceptance.
First Article Inspection (FAI)	A detailed inspection which permits the Engineer to see, in three dimensions, what could be seen only on two dimensional drawings up to that point. If the First Article Inspection is of a component that the Contractor is purchasing, rather than making itself, the First Article Inspection discloses details that were not visible beforehand. The First Article Inspection is usually the first point at which maintainability of the component can be evaluated, inasmuch as it is the first point at which relationships between elements can be appreciated. The Engineer may approve the design that is revealed at the First Article Inspection, or may require changes in order that the component can meet the requirements of the Contract. Second, it is used to establish the quality level of workmanship that will be maintained for the balance of the components. The level is established jointly by the Engineer and the Inspector.
Fleet Defect(s)	As used in these Specifications, is defined as the failure of identical items by specific location and/or function on the vessel, or repeat failure of the same item, covered by the warranty, and occurring in the warranty period.
Independent Failure	A failure which is not the result of another failure, either directly or indirectly.
Indicated	As described in the Contract Documents.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

In-Process Inspection (IPI)	Scheduled or unscheduled inspection of parts, components, manufacturing facilities or manufacturing processes at any time during the production process. May be utilized to verify efficacy of processes and quality of parts prior to reaching completion.
Inspector	A person or firm designated by the Owner as its quality assurance representative. The Inspector’s authority is derived through the Owner’s representative.
Intellectual Property Rights	Means copyrights, patent rights, trade secret rights, and any other rights to exclude, existing from time to time in a jurisdiction under patent law, copyright law, trademark law, unfair competition law, moral rights law, trade-secret law, or other similar law.
Interface	The point at which one system component or subsystem comes into physical or functional contact with another for the purpose of transferring energy or information.
Jumper	A short piece of wire or cable with appropriate terminations on each end to permit connection to terminals within a terminal board or to an adjacent terminal strip.
Licensed Software	Means (i) all software called for in the Technical Specification, and (ii) all other software and firmware that Contractor delivers or is obligated to deliver pursuant to the Contract Documents, or that is contemplated under the Contract Documents. For purposes of clarification, and not limitation, the term "Licensed Software" includes all software and firmware related to: (a) on-board diagnostics, (b) system diagnostic systems, (c) portable test equipment; and (d) onboard communications or navigation equipment.
Lowest Level Replaceable Unit (LRU)	The lowest level component or part that can be replaced during running maintenance.
Maintenance Instructions	Guidelines prepared by O.E.M. or Vendors for the maintenance of the equipment by the user.
Major Equipment	Components, sub-assemblies, assemblies and ancillary equipment that together comprise a vessel system that is a section title in this specification.
Manufacturer	An original builder or producer supplying materials, components, devices, equipment, or apparatus for installation on the vessel.
Material (Supplies)	Any substances specified for use in the construction and/or manufacture of the Procurement End Products(s), or to be furnished to the Owner as loose items as part of the Procurement.
Massachusetts Bay Transportation Authority, or MBTA	Created by Chapter 563, Section 18 of the Acts of 1964 of the Commonwealth of Massachusetts, the Party of the First Part to the Contract.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

Material Review Board (MRB)	A Material Review Board is a group of appropriately gathered individuals to review and dispose material of workmanship found to be non-conforming during the incoming inspection or any part of the fabrication and inspection and testing process. The MRB may vary in its makeup from time to time dependent upon the condition and component under review. Generally, participants include representatives from the Contractor Engineering Quality and Project management departments, and representatives from Quality and Engineering departments. The MRB documentation must include a signature from the customer representative indicating agreement with the MRB disposition. Additional members may be included in the MRB as their expertise is required for a particular material and condition being reviewed. Material Review Boards may be regularly scheduled meetings or may be scheduled on an as-needed basis. Material Review Board dispositions shall include corrective action, effectivity, recurrence prevention and a schedule for those activities.
Minimum Service Life	Minimum Service life expected for each vessel as described in the Technical Specifications and as defined in FTA Circular C4220.1F, Chapter IV.2.e.3 (Rolling Stock – Special Requirements: Minimum Service Life, which is applicable to Federally funded rolling stock, including ferries).
Minimum Useful Life	Minimum Useful life expected for each vessel as defined in FTA Circular 5010.1E, Chapter IV 3.f.2.d, which is applicable to Federally funded ferries.
Notice	Shall mean written notice.
Offeror	Any individual, firm, partnership, corporation or joint venture submitting a Proposal on the Form for Proposal provided, for the work contemplated, acting directly or through a duly authorized representative.
Operating Contractor / Contracted Operator	The individual, firm, partnership, corporation or combination thereof, private, municipal or public, including joint ventures, which, as an independent Contractor, has entered into a Contract with the Owner to operate and maintain the Owner’s commuter boat services.
Original Equipment Manufacturer(s)	The original manufacturer of the vessels/vehicles and all principle subcomponents.
Overhaul (Work)	The furnishing of all equipment, items, materials, parts, systems, data, design, services, incidentals, labor and management and performance of the contractual requirements defined in the Contract Documents, including changes thereto, in order to produce and deliver the specified overhauled Vessels, Capital Spare Parts, consumables, software goods, and services.
Owner or Purchaser	The MBTA, as defined herein.
Party, Parties	Entity(ies) entering into the Contract.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

Performance Review Board (PRB)	A Performance Review Board is a group of appropriately gathered individuals to review issues of performance, including warranty issues and maintenance, that may arise after delivery and that present risks to the vessels satisfactory performance, both within and after the warranty period. The PRB may vary in its makeup from time to time dependent upon the condition and component under review. PRB participation will be determined by the Owner, but generally participants will include representatives from the Contractor, the Owner’s Operator, and the Owner. Additional members may be included in the PRB as their expertise is required for a particular material and/or condition being reviewed. Performance Review Boards may be regularly scheduled meetings or may be scheduled on an as-needed basis. Performance Review Board dispositions shall include corrective action, effective recurrence prevention and a schedule for those activities.
Pre-Shipment Inspection	Inspection of a vessel, product, parts, components subsystems and/or systems conducted immediately prior to releasing items for shipment to Contractor or other destination.
Production Vessel/Vehicles/Fleet	A ferry delivered during the contract.
Program	The total effort undertaken by the Owner of which the End Products may constitute a whole or a part.
Project Manager for Engineering	See Technical Project Manager.
Proof (used as a suffix)	An apparatus is designated as “splash-proof,” “dust-proof,” etc., when constructed, protected, or treated so that its successful operation is not impeded when subjected to the specified material or condition.
Proposal	A written submission, in response to the RFP, by a Proposer for the Work; properly signed, dated and completed and as may be amended through a Best and Final Offer.
Proposal Form	The approved form on which the Owner requires proposals to be prepared and submitted for the work, and which is part of the Proposal heretofore defined. When executed by the Offeror, the proposal becomes the Contractor's written offer to perform the work and furnish and deliver the equipment/materials at the prices quoted.
Proposal Drawing Package	Drawing Package submitted with the Bidder’s response to the RFP.
Proposal Modification and Clarification Guidelines (PMCG)	Written interpretation(s) or revision(s) of any of the Contract Documents sent to Offerors after the submittal of proposal, as well as instructions for preparing and submitting a revised proposal.
Receipt, Received	Acknowledgement that a shipment has reached its destination

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

Recondition	The term “recondition” shall mean the restoration of an item to have the performance, service life, and appearance of a new item through the replacement of worn parts, adjustments, cleaning, refinishing (i.e. painting, polishing, anodizing, etc.), repair of any damage, and any other rehabilitation work required. When an item is beyond reconditioning, it shall be replaced with an Authority approved part.
Reference	Where reference is made in the Contract Documents to publications or standards issued by associations or societies, the intent shall be to specify the current edition of such publications or standards in effect on the date of the Contract Advertisement, notwithstanding any reference to a particular date.
Related Defect	Damage inflicted on any component or subsystem as a direct result of a defect.
Reliability	The probability that a system, subsystem, component, part, or other equipment will perform its intended functions without failure and within design parameters under specified operating conditions for which it is designed and for a specific distance or time.
Representative	Shall mean any duly authorized agent of the Owner or the Contractor.
Retrofit	A modification performed after Conditional Acceptance.
Safe	The condition in which passengers, crew, or repairmen are secure from threat or danger, harm, or loss arising from improper design, manufacture, assembly, malfunction, or failure of the vessel or any of its components or systems.
Section	Section refers to the indicated Section of the Contract Documents and Specifications plus all subsections thereof (unless the context indicates otherwise).
Service, as in Service Use, Revenue Service	The operation of the vessels under normal conditions with passengers.
Shipment	The physical process of transporting a vessel and associated components, or other required physical deliverable item, from the point of manufacture or assembly to the next manufacturing or assembly facility or to Owner’s property.
Shipyard	See Contractor.
Shop Drawings	Drawings or sketches prepared by the Contractor for use in its manufacturing facility, assembly facility, or shop, to fabricate, assemble, and/or install parts of the vessel, whether manufactured by it from raw materials or purchased from others in a ready-to-use condition.
Source Inspection	Inspection conducted at the source of the product (generally Subcontractor/Supplier). May include FAI, IPI, PSI, or may be performed as part of an investigation to gather data used to locate the source of the problems revealed later in the vessel production process, testing or in service.
State	The Commonwealth of Massachusetts.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

Subcontractor	Any individual, partnership, firm, corporation, joint venture, or any combination thereof who provides labor and services, performs, or installs (totally or partially) a Contract Item; or who performs other services for the Contractor, as required to fulfill the Work, by virtue of an agreement with the Contractor.
Supplier (Vendor)	The persons, firm, or corporations who furnish materials/services to the Contractor. Supplier furnished materials/services shall comply with all the contract requirements. Note: In the course of this Contract, the Owner may interchangeably use the words subcontractor, supplier, subsupplier, vendor, as synonyms, all the aforementioned being under contract to the Contractor.
Surety	The corporate body bound with and for the Contractor for the full and complete performance of the Contract and for the payment of all legal debts pertaining to the work, and who executed the Performance Bond(s) furnished by the Contractor.
Tamperproof	Fasteners are designated as tamperproof when they are selected so that they cannot be easily loosened with common tools such as a flat blade screwdriver or pliers.
Technical Project Manager (Engineer)	The person designated by the Owner to be its liaison with the Contractor on all technical matters pertaining to work. The Technical Project Manager for Engineering shall be empowered to act on behalf of the Owner in such matters as acceptance of Contractor's drawings, test procedures, First Article Acceptance, and valid acceptance. Said person shall be designated in writing on the Owner's official letterhead.
Technical Specifications (“TS”), Specifications, or Contract Specifications	Shall mean Technical Specification No. RROPS20-01 for the Overhaul of two 149 passenger Subchapter T vessels, and any appendices, change orders or addenda made pursuant to the Contract Documents
Tight (used as a suffix)	Apparatus is designated as “watertight,” “dust-tight,” etc., when so constructed that the enclosing case will exclude the specified material.
U.S. Department of Transportation	U.S. Department of Transportation (DOT) means the Secretary of the (DOT) and other persons who may at the time be acting in the capacity of the Secretary, or authorized representative or any person otherwise authorized to perform the functions to be performed hereunder, including representatives of the Federal Transit Administration (FTA).

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER "T" FERRIES

Value Engineering	<p>Proposals or submittals for evaluation that clearly describe or define new methodology, materials, or engineering techniques that significantly improve the vessel/sub-system performance, life, or significantly reduces existing and future cost.</p> <p>Value engineering submittals are the direct result of Contractor or Subcontractor suggested improvements to vessel standard, system, subsystem, methodology, materials or processing techniques that will result in significant cost savings, without any sacrifice in quality, reliability, or maintainability.</p> <p>Value engineering applicable to those areas of Contract responsibilities (i.e., best method of work performance, sequence and methodology of job performance, contracted engineering items, design restoration, etc.), as well as submittals that address alternatives to current method or means without significant improvement to design, function, performance or justifiable cost effective investments will <u>not</u> be considered.</p> <p>Submittals that originate from the Contractors or Subcontractors must clearly establish a cost savings. Submittals relative to the Contractual work, but, not defined in the Contract Scope of Work, shall be applicable to characteristics savings, and shall become the property of the Owner upon acceptance.</p> <p>Submittals shall contain, as a minimum, the following:</p> <ol style="list-style-type: none">1. Background of suggested/affected change.2. Nature and measurement of value.3. Sufficient/adequate supportive documentation for evaluation.
Vehicle	See Ferry.
Vendor	See Supplier.
Vessel	See Ferry.
Vital Circuit	That term applied to any device, circuit, or system, the function of which affects the safe operation of the vessel.
Weight, Actual	The measured weight of a finished empty vessel, ready for passenger carrying service, and with all fluid levels.
Work (Procurement)	Where the context will allow, the term "work" means the production of goods and services furnished in accordance with the Contract.
Yard or Shipyard	See Contractor.

NOTE: Any reference in the above Sections act in harmony with elements noted in the Contract Documents, which include the Technical Specification.

3. BUSINESS AND COMMERCIAL REQUIREMENTS

The following provisions are contractual and, by submitting a response to this RFP, Bidder agrees that the submission of their Bid with the signatures in the response forms (Sections 10 and 11 and **Attachments 2, 3, and 5**) makes all certifications as outlined in the solicitation documents. This Bid shall constitute a binding offer open for acceptance by the MBTA.

3.1. Award and Execution of Contract

Prior to Contract execution:

- The MBTA will perform a Pre-Award Buy America Audit
- The required Performance Guarantee (Section 3.3) shall be furnished

Should the successful Bidder fail to furnish the Performance Guarantee and execute the Contract within the time stipulated, the Authority may, at its option, declare the successful Bidder to be in breach of its obligations.

Upon execution of the Contract by all parties, Notice to Proceed shall be issued. Contract execution shall be in place at the time of, or prior to, issuance of Notice to Proceed.

3.2. Insurance Requirements

1. The Contractor must carry and maintain, throughout the term of the Contract, including any extensions, the following minimum insurance requirements:
 - a. The Contractor must carry **Commercial General Liability Insurance** for personal injury, bodily injury and property damage, including products liability and completed operations, with limits not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate covering all work and services performed under the Contract. This insurance must include all operations and contractual liability.
 - b. The Contractor must carry **Excess Follow-Form Policy** with limits of not less than \$10,000,000 per occurrence and in the aggregate, covering all work and services performed by the Contractor under this Contract.
 - c. The Contractor must carry **Automobile Liability Insurance** with limits not less than \$1,000,000 combined single limit, covering the use of all motor vehicles owned, leased, hired and non-owned under the Contract.
 - d. The Contractor must carry **Workers’ Compensation Insurance**, including Employers’ Liability Insurance as provided by MGL Chapter 152, as amended, covering all work performed in Massachusetts under the Contract. Such insurance must contain a waiver of any and all subrogation rights against MBTA. The Workers’ Compensation coverage must be endorsed to include Longshore and Harbor Workers’ Act (USL&H) coverage, as required by the United States Department of Labor, covering all work performed under the contract. Such coverage must also include a waiver of any and all subrogation rights against the Massachusetts Bay Transportation Authority.
 - e. The Contractor must carry and maintain **Cyber Network Security and Privacy Liability**, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information,

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

- privacy perils, and including coverage for related regulatory defense and penalties in an amount not less than \$1,000,000.
- f. If the Contractor is working on MBTA’s property, the Contractor must carry **Pollution Liability Coverage** in an amount not less than \$1,000,000 for all hazardous materials including, but not limited to, those identified in the Contract Specifications.
 - g. The Contractor must carry **Professional Liability (Errors & Omissions) Coverage** for wrongful acts and personal injury, bodily injury, and property damage liability resulting from design engineer errors, with limits not less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate, covering all design and engineering work and professional services performed under the Contract.
- 2. All liability policies must be written on an occurrence basis.
 - 3. All insurance carriers must have an A.M. Best rating of A- or greater.
 - 4. Insurance required of the Contractor must be provided by or on behalf of all Subcontractors to cover their operations performed under the Contract. The Contractor will be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to Subcontractors. MBTA preserves the right to request and receive original policies within 30 days of request.
 - 5. The Contractor must include a waiver of subrogation rights against MBTA in its Workers’ Compensation and Employers’ Liability policies and must name MBTA as an additional insured under the Commercial General Liability, Automobile Liability, Excess Follow-Form Policy, and Pollution Liability.
 - 6. All insurance required under Section 4.3 will be primary and noncontributory from any insurance or self-insurance maintained by MBTA.
 - 7. Insurance Certificates for the above policies must be furnished to MBTA 7 working days prior to Contract execution.
 - 8. MBTA retains the right to request original, unredacted, certified copies of the above insurance policies at its sole discretion. The Contractor must provide these within 30 days of MBTA request.
 - 9. A minimum of 60 days’ notice must be given to MBTA of a non-renewal, cancellation, or major change in any policy.

3.3. Performance Guarantee

- A. **Performance Guarantee.** A Performance Guarantee in the amount of **25%** of the contract shall be required by the Authority prior to execution of the Contract, unless otherwise agreed to by the Authority, to ensure the faithful performance of the Contract. The Performance Guarantee shall be either a Performance Bond or an Irrevocable Stand-By Letter of Credit. The minimum requirements to be met by either performance guarantee are:
 - 1. The Performance must remain valid and in force for its full amount until the date of the Certificate of Conditional Acceptance of the 2nd Vehicle, executed by MBTA and the Contractor in accordance with RFP Section 6.8.
 - 2. This amount will continue in force and effect until completion of the Contract.
 - 3. The Bidder must certify in writing with its proposal that a 25% Performance Bond or an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor.
- B. **Performance Bond.** The Performance Bond is to be secured through an insurance company (or companies) which is/are licensed in the Commonwealth of Massachusetts or which is/are approved by the Authority. The insurance company must have an A.M. Best rating of A- or better. The name of the agency or agent

writing the bond shall be identified with or on the bond.

- C. **Irrevocable Stand-By Letter of Credit.** The Irrevocable Stand-By Letter of Credit shall be executed in a form approved by the Authority following Notice of Award but prior to Contract execution.

If the Contractor chooses to provide a Letter of Credit as its performance guarantee, the issuing bank will dictate the form of the Letter of Credit. MBTA will approve the format following Notice of Award but prior to Contract execution. The following terms must be met:

1. The Letter of Credit must be issued by a bank in good standing. The Authority will not accept a Letter of Credit from an entity other than a bank.
2. The Letter of Credit must be in writing and must be signed by the issuing bank.
3. The Letter of Credit must conspicuously state that it is an irrevocable, non-transferable, “standby” Letter of Credit.
4. Massachusetts Bay Transportation Authority must be identified as the Beneficiary of the Letter of Credit.
5. The effective date of the Letter of Credit must be the same as the effective date of the Contract.
6. The expiration date of the Letter of Credit must be for the amounts and cover the time periods described in Section 3.3A.1.
7. The Letter of Credit must indicate that it is being issued to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the MBTA and the Contractor for the overhaul of two ferries.
8. The issuing bank’s obligation to pay will arise upon the presentation of the original Letter of Credit. This documentation will indicate that the Contractor is in default under the Contract. The above documents will be presented to the issuing bank’s representative at a location and time to be determined by the parties.
9. Statement from banking institution certifying Letter of Credit for the action, if awarded, to be provided with submission.

Note: Should the Offeror choose to select a Letter of Credit for Performance Guarantee, in accordance with Section C4.04C the issuing Bank will dictate the Form of the Letter of Credit. The Owner will approve the format following notification of Award but prior to contract execution.

3.4. Liquidated Damages

- A. **General.** This Section will be construed and treated by the Parties to the Contract not as imposing a penalty upon the Contractor for failing to fully complete the work as agreed in the Proposal or as it shall have been intended, but as Liquidated Damages to compensate MBTA for all costs it incurs due to the failure of the Contractor to comply with provisions of the Contract.
- B. **Amount of Liquidated Damages.** Liquidated Damages will be claimed by MBTA as follows:

1. **Delivery Factor.** The amount of Liquidated Damages that shall be deducted per calendar day from the Contract Price for failure to present the overhauled vessels to MBTA in a condition ready for Acceptance as specified is \$1,000 per day per Vessel. These Liquidated Damages will be applied to each Vessel for each day it is delayed beyond the Delivery Schedule (see Section 1.1.A1.)
 - a. If delay occurs due to a Force Majeure Event, the Contractor will not be liable for any Liquidated Damages specified under the Contract or damages of any kind as a result of said delay, provided that the Contractor informs MBTA, in writing, within 10 days of the Force Majeure Event (see Sec. 9.9).
 - b. Permitting the Contractor to continue to deliver Vessels after the time fixed for its completion, or after the date to which time for Delivery shall have been extended, will in no way operate as a waiver on the part of MBTA of any of its rights under the Contract or other available legal remedies..
 2. **Technical Assistance.** Liquidated Damages shall be claimed during the warranty period in the event the Contractor fails to make available to MBTA qualified personnel to provide technical assistance to correct identified within 72 hours of MBTA Notice to the Contractor of the defect. MBTA shall assess against the Contractor \$1,000 per day per Vessel for each day the Vessel is out of revenue service until the Contractor provides sufficient technical assistance to initiate work on the Vehicle.
- C. **Payment of Liquidated Damages.** Accrued Liquidated Damages shall be deducted from any money due to the Contractor or to become due at the time of final payment.
1. If the remaining money due to the Contractor is insufficient to cover the Liquidated Damages, then the Contractor must pay the remaining difference to MBTA.
 2. NOTE: In the event a Vessel is being withheld from revenue service for not providing technical assistance and warranty materials, liquidated damages shall be assessed for technical assistance or materials, but not both simultaneously.
- D. **Total Liquidated Damages.** The maximum percent for all Liquidated Damages for all Vessels will not be in excess of 5% of the total Contract value as adjusted through Change Orders.

3.5. Contractor Responsibility and Legal Requirements

The End Products shall meet and the Contractor shall comply with all applicable Federal, State, and local regulations in effect at the date of manufacture. These include but shall not be limited to ADA, EPA and all applicable US Coast Guard and NFPA regulations in effect at the time the NTP is issued. Local regulations are defined as those below the state level. In the event of any conflict between the requirements of this Specification and any applicable legal requirement, then the legal requirement shall prevail.

Notwithstanding, anything in the Contract to the contrary, it is understood and agreed to by the Contractor that the Authority provided the Technical Specification for the sole purpose of describing in general terms the performance required from each vessel, each vessel's systems and the discrete subsystems that make up the vessel. The specification provided by the Authority does not in any way constitute a design of the vessel or of such subsystems or discrete components. It is further understood that the Authority makes no representations regarding the Technical Specifications. It shall be incumbent on the Contractor to verify the accuracy of the Technical Specifications prior to the time of the bid.

The Technical Specification is intended to leave the Contractor free to provide its own detail design application for all major subsystems and the Contractor shall assume complete and responsibility for the satisfactory operation and systems integration of the subsystems. The Contractor’s responsibility includes but is in no way limited to; ensuring that the overhaul of the vessel and the vessel component parts are appropriate, coordinated, and compatible and that they perform correctly, whether together or individually.

The Contractor shall ensure that each subcontractor who will manufacture or remanufacture major items of equipment (for example, engine, waterjets, generators, air conditioning, heating and cooling controls, navigation systems and controls) has a complete copy of the Technical Specifications. Sub-suppliers shall approve of and sign-off on the Contractor’s specific application of their components. Proof of sub-supplier’s installation approval, for all major subsystems, shall be provided to the Authority. All Subcontractors and subsystem suppliers proposed by the Contractor to manufacture parts / systems are subject to the Authority’s approval.

3.6. Permits and Licenses

The Contractor shall procure all permits and licenses in producing the end product, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of this Procurement.

3.7. Ongoing Compliance Obligations

Contractor Compliance. The Contractor shall keep fully informed and shall comply with the provisions of applicable federal, state, and municipal laws, rules, and regulations that in any manner regulate the Contractor’s performance of this Contract and those engaged or employed with the services herein described, other than any such laws, rules and regulations that relate to MBTA’s own operations. The Contractor shall indemnify, protect, defend, and save harmless MBTA and its officers, agents and employees harmless from all fines, penalties, and liabilities imposed upon MBTA under any such laws, rules, and regulations by any public agency, authority or court having jurisdiction over the parties hereto when the imposition of same is attributable to the failure of the Contractor to keep fully informed and to comply with its obligations in this regard, provided that if any public agency, authority or court seeks to impose such fine, penalty or liability on the MBTA, the MBTA shall promptly notify the Contractor and allow the Contractor, in consultation with the MBTA, to object to and defend such imposition.

Subcontractor Compliance. The Contractor shall be responsible for the compliance of its subcontractors/suppliers to the requirements of federal, state, and municipal laws, ordinances, rules, and regulations as may be applicable to the performance of such subcontractors or suppliers pursuant to this Agreement.

Change in Existing Law. The Contractor is subject to any existing or future valid legislative act, municipal ordinance, decree, order or regulation of any public body, commission or authority having jurisdiction over the MBTA, and order of decree by a court of competent jurisdiction to which the MBTA or any predecessor or successor in title may be a party, and, if the Contractor is unable to enjoy any or all of the privileges granted in the Contract, the MBTA shall not be liable to the Contractor in damages for breach of the Contract. The MBTA and the Contractor shall assess the impact any change in existing law may have on the price and schedule of the work herein defined and modify the Contract as needed in accordance with the Change Order provision of the Contract.

If any discrepancy or inconsistency is discovered in the Contract in relation to any law, ordinance, regulations, order or decree, Contractor shall forthwith report the same to the Authority in writing.

Contractor shall provide that changes in the Contract work, which are necessitated by laws or regulations that are enacted or promulgated after the Effective Date, shall constitute Contract changes in accordance with the Change Order provision of the Contract.

3.8. Claims

The Contractor shall give written notice to the MBTA of potential claim no later than thirty (30) calendar days from any act or event for which it intends to seek adjustment in payment, terms, or schedule and for which said matter is not disposed of by agreement through a Change Order. The written notice shall set forth the basis of the claim in sufficient detail to allow the MBTA to thoroughly evaluate the situation and shall provide an estimate of any costs involved. The Contractor shall also furnish any additional information relating to the claim as the MBTA may reasonably request. The MBTA shall respond to the claim within thirty (30) calendar days of receipt of said claim.

It is an essential part of this Contract that the Contractor performs fully, entirely, and in an acceptable manner, the work required under the Contract within the times stipulated. Therefore, the Contractor hereby agrees that it shall have no claim for damages of any kind on account of any delay in commencement of the work or any delay or suspension of any portion thereof, except as hereinafter provided.

In case the commencement of the work is delayed or any part thereof is delayed or suspended by the Authority (except for reasons caused by the fault or neglect of the Contractor), the Contractor shall be granted an extension of time in which to complete the work, less a reasonable period of time within which the Contractor could have done necessary preliminary work.

If performance of all or any major portion of the work is suspended, delayed or interrupted for any unreasonable period of time by an act or failure to act by the Authority in the administration of the Contract as required by the Contract, and without the fault or negligence of the Contractor, an adjustment to the Contract shall be made by the Authority, in accordance with the Change Order provisions of Section 8. The Contractual adjustment may be for: (1) an extension of time; and/or (2) an increase or decrease in the actual cost of performance of the Contract.

No adjustments to the Contract shall be made if performance by the Contractor would have been prevented by other causes even if the work had not been suspended, delayed or interrupted by the Authority.

Any dispute concerning whether the delay or suspension is unreasonable or any other question of fact arising under this section shall be determined by the Authority. Such determination shall be a condition precedent to the right of the Contractor to receive any cost adjustment hereunder.

The decision of the Authority shall be final and conclusive unless within thirty (30) days of receipt of the Authority's decision the Contractor mails or delivers to the Authority a written notice of rejection, in which event the decision of the Authority shall have no further effect and either party may have the dispute and the subject matter thereof settled in accordance with the provision of Section 4.9 (Disputes).

3.9. Disputes

The MBTA and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the MBTA and the Contractor's organization. In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner. Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Authority's direction or decisions made thereof.

3.10. Claims and Disputes

Any dispute arising at any time under the Contract Documents which is not disposed of by agreement through a Change Order, as described in Section 8, shall be decided in the first instance by the Authority, as described above, who shall reduce its decision to writing without unreasonable delay.

1. If the Contractor fails to submit a claim within twenty-one (21) working days of the Authority's dispute of the Change Order request, that claim shall be deemed waived by the Contractor without further recourse.
2. Any other claim must be brought to the attention of the Authority within fifteen (15) working days of the event which raised the claim. If the Contractor fails to bring the claim within the fifteen (15) working day period, the claim shall be deemed waived by the Contractor without further recourse.

The decision of the Authority shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copies thereof, the Contractor mails or delivers to the Authority a written notice of rejection, in which event the decision of the Authority shall have no further effect and either party may have the dispute and the subject matter thereof settled by a court of competent jurisdiction.

In the event the Authority fails to make a decision as aforesaid on any dispute within a reasonable period after having been requested to do so by the Contractor, then either party may have the dispute and the subject matter thereof settled directly by a court of competent jurisdiction.

Pending final settlement of any dispute, both parties shall proceed diligently with the performance of the Contract and in accordance with the Authority's decision, if any.

Notwithstanding any provisions of this section or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Nothing mentioned above precludes the parties from informally resolving a claim or dispute or prevents a negotiated settlement of a claim or dispute prior to resolution by the courts.

3.11. Examination and Audit

The Contractor shall maintain and require its subcontractors to maintain, in accordance with generally accepted accounting principles, books, records, and other compilations of data pertaining to the Contractor's services, delivery of materials, and other items in such detail as to substantiate claims for payment or for collections on behalf of the Authority under this Contract. Upon reasonable advance written notice, the General Manager of the MBTA or his designated representative (including private auditing firm) shall have the right to examine and audit all data and records of the Contractor relating to its performance under the Contract.

The Contractor, upon seven (7) days' advance written notice by the MBTA, shall make available to MBTA personnel, its representatives or other authorized agencies, all records and data maintained by the Contractor for the purposes of performing financial, compliance, and performance audits related to the reimbursable costs under this Agreement. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract until the disposition of all such litigation, appeals, claims or exceptions related thereto.

3.12. Inspection of Site(s)

The Authority and/or its representatives shall have access to the site of the construction/manufacture/assembly and shall have the right to inspect all project work.

4. SCOPE OF WORK

4.1. Intent of Contract

- A. The intent of the Contract is to provide for the Procurement of End Products in accordance with the Contract Documents.
- B. Unless specifically stated otherwise, all materials, parts, and equipment furnished by the Contractor shall be new and free from defects. The Contractor guarantees and warrants that all work performed and items supplied under this Contract will conform to all requirements of this Contract and be free from all patent and latent defects in materials and workmanship.
- C. Unless otherwise specified, the Contractor must furnish all labor, materials, tools, equipment, and incidentals necessary to complete the Procurement.
- D. MBTA reserves the right to waive any contractual or technical requirements of these Contract Documents as determined to be in its best interest. For any associated cost or credit see Part C7.00.

4.2. Warranty

- A. **Warranty Periods.** The Contractor must guarantee all parts, materials, installation, integration and workmanship provided by the Contractor shall perform satisfactorily for a period of one (1) year from the Conditional Acceptance of each vessel, except as noted below:
 - 1. Main engines, water jets, generators and reverse/reduction gears shall perform satisfactorily for a period of two (2) years from Conditional Acceptance for each Vessel.
 - 2. Any warranty from a Subcontractor, manufacturer or Supplier to the Contractor exceeding any period required by the Contract shall be extended to the Owner for the same period of time as given to the Contractor.
- B. **Submittal of Warranty Procedures.** Prior to delivery of the first overhauled vessel, the Contractor must submit its proposed Warranty Plan and procedures for MBTA review and approval.
- C. **Warranty Coordinator.** The Contractor must provide a Warranty Coordinator to handle and coordinate all Warranty issues with MBTA for a period beginning with the Delivery of each vessel and ending two years from the date of Conditional Acceptance of the last overhauled vessel. The Warranty Coordinator must respond to all issues within one working day of notification.
- D. **General Requirements.** The Contractor must guarantee that the overhauled vessels are in accordance with the Contract Documents when accepted, and that the items supplied fulfill their design functions and are fit for both its ordinary and intended purposes. The Contractor must further guarantee against defect due to

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

faulty design, poor workmanship, or poor material during Warranty Periods. If any Vehicle or equipment parts prove defective during the respective Warranty Periods, MBTA will promptly notify the Contractor, and the Contractor must promptly repair or replace, as mutually agreed by both parties, such parts without expense to MBTA.

1. MBTA will give the Contractor Notice of the defects, grant the Contractor reasonable access to the defective parts, and will not alter the defective parts in any manner without the Contractor's knowledge.
2. The Contractor must, within 72 hours from notification of Warranty claim, make available to MBTA such quantity of competent personnel as may be reasonably needed to initiate effective corrective action.
3. The Contractor must maintain support materials necessary to address the defect without an extended removal of the vessel from service. The Contractor shall, within one (1) week from notification of warranty claim, deliver repaired or replacement parts; prior Owner authorization is required for return period exceeding one (1) week.

a. Current MBTA material inventory or Spare Parts will not be available to comply with this requirement.

4. A report describing the analysis and corrective work performed must accompany all repaired parts returned to MBTA.
5. The Contractor must provide a failure analysis for each Warranty failure.
6. Any protocol that becomes obsolete prior to the end of vehicle warranty must be replaced, either by upgrading software or hardware, at the expense of the Contractor.

E. **Identification and Correction of Defects.** The Contractor is responsible for all labor and material costs for defect identification and location; the removal, repair, or replacement of defective parts; and related alterations, repairs, tests, and adjustments made to obtain the specified Vehicle performance within the Warranty Periods.

1. In the event MBTA incurs extra costs, including Consultant costs, which are directly attributable to the Contractor's performance or lack thereof, the total extra costs for the related labor, materials, equipment and Consultant services are the sole responsibility of the Contractor. This includes Consultant efforts reviewing drawings, conducting inspections and monitoring Field Modification Instruction (FMI) procedures. This provision is not limited to the Warranty Period (Sec 4.2) and is applicable to the entire Contract.
2. The MBTA may, at its own discretion, to perform corrective and Warranty work and services on the property of the Authority or its contracted operator, and may choose to utilize MBTA or contracted operator personnel. When this work is performed by MBTA or its contracted operator, the Contractor must compensate MBTA for all expenses, including the cost of parts, material, tools, and the cost of labor at prevailing labor rates. MBTA must not be charged for any required corrective and Warranty work.

- a. Due to the regular maintenance demands on MBTA facilities and personnel, it may be possible for MBTA or its contracted operator to undertake only minimal adjustment, repair, or replacement work on equipment prior to Acceptance. In such an event, the Contractor will be responsible for securing facilities and personnel to complete all additional work required for the duration of the Contract.
 3. Any repair or retrofit work required under the Warranty must be accomplished with minimum disruption to MBTA’s operations and maintenance.
 4. In no case will any correction of defects in design, material, or workmanship take the form of an increase in maintenance requirement beyond that specified in the Contract Documents, described in the original edition of the maintenance instructions, approved in the baseline design, or submitted by the Contractor at the time of Proposal.
 5. **Fleet Defects.** Where a warranted item or system on either vessel repeatedly either fails or requires unplanned maintenance during the warranty period, MBTA may classify the failure of such items as a Fleet Defect, including those items for which the Warranty Period expired before MBTA recognized the failure.
 - a. In such cases the Contractor is responsible for all costs of labor and materials; defect identification and location; removal, repair or replacement of defective parts; and redesigns, alterations, repairs, tests and adjustments to each of that part of system on both vessels to obtain full fleet compliance with the required vessel and/or component performance and availability identified in the Contract Documents.
- F. Warranty Extension.** If a Vehicle is removed from revenue service for seven consecutive days or more for Warranty repair or retrofit work, the duration of time the Vehicle is removed from service will extend the Warranty Period accordingly.

4.3. Required Key Contractor Personnel

- A. The Contractor must identify and dedicate the following key personnel to work in support of this program:
 1. **Program Manager (PM).** The Contractor must designate a qualified full-time Program Manager to serve as the primary point of contact and who is responsible for overall management of the program.
 2. **Lead Engineer.** The Contractor must designate a qualified full-time Lead Engineer dedicated to all engineering aspects and activities of this program.
 3. **Systems Integrator.** The Contractor must designate a qualified Systems Integrator to coordinate all network, electrical, and mechanical interfaces between different Vessel systems and subsystems, the Vessels and the landside interfaces (docks, maintenance and layover facilities), and electrical interference control.
 4. **Safety & USCG/Regulatory Liaison.** The Contractor must designate a qualified, representative to oversee the Contractor’s safety program, including all contacts with the US Coast Guard and other applicable regulatory bodies.

5. **Quality Manager.** The Contractor must assign a member of its management as the single point of contact with overall responsibility for implementing and maintaining the Contractor’s Quality Assurance Program in accordance with Technical Specifications Section 018.
 6. **Field Service & Warranty Coordinator.** The Contractor must furnish the services of a qualified representative to promptly respond to and coordinate all warranty issues and supporting materials during the Acceptance Testing and warranty periods for all Vessels. The coordinator shall also be responsible for providing assistance during inspection, operation, testing and adjustment of the Contractor furnished equipment, to ensure satisfactory performance.
 7. **Testing and Commissioning Manager.** The Contractor must assign a qualified on-site Testing and Commissioning Manager who will have full responsibility for all Contractor and Subcontractor activities in the commissioning phase of the program.
 8. **Manuals Manager.** The Contractor must designate a qualified individual to be responsible for the coordination, completion, submittal, and quality of all required manuals, maintenance instructions and vendor information in accordance with Technical Specifications Section 006.7.
- B. The Contractor must maintain detailed position descriptions and timelines (e.g. hire date and duration of time dedicated to the project) for each of the above program team members, clearly defining their roles and reporting structure.
1. These descriptions, and all resumes for the above program team members, must be submitted to MBTA for initial approval and upon any staffing changes.
- C. If the Contractor proposes using personnel for any of the above positions other than those presented in its Proposal, the Contractor must identify candidates within 30 days after NTP.
- D. MBTA reserves the right to review credentials and accept or reject all Contractor support personnel based on qualifications, effectiveness in past or present work performance, communication abilities, or other criteria as determined by MBTA.
- E. The Contractor must immediately notify MBTA of any change in the Contractor’s key personnel. If a new candidate is proposed, the Contractor must notify MBTA 30 days prior to the date of the proposed change in personnel and obtain MBTA approval prior to making the change.
- F. The costs of the above personnel must be included in the Contract Price.
- G. The Contractor is responsible to maintain an effective project team and manage the project progress.

4.4. Contractor Furnished Facilities

- A. The Contractor shall furnish and maintain at Contractor’s production facilities and final assembly area, and at the Contractor’s expense, office space and associated facilities for use by the Authority and its representatives in accordance with the requirements of Technical Specification Section 013.

5. CONTROL OF PROCUREMENT

5.1. Master Schedule

- A. Within 30 days after NTP, the Contractor must submit a Master Schedule per the requirements of Technical Specification Section 006.10 in the latest version of Microsoft Project, or other Authority approved format.
- B. The Contractor must maintain a current Master Program Schedule throughout the project, per the requirements of Technical Specification Section 006.10.
- C. In the event of any lateness in the schedule, the Contractor must, at MBTA’s request, provide a planned recovery timeline.

5.2. Contractor’s Submittals

- A. General. Unless otherwise specified by the Technical Specification, within 30 days after NTP, the Contractor must submit proposed formats for monthly and quarterly submittals of periodic contract deliverables such as Change Order logs, Subcontractors updates, and DBE Reports.
- B. Contractor’s Drawings
 - 1. The Contractor must prepare drawings in the formats specified in the Technical Specifications Section 006.2.
 - 2. The Contractor must submit drawings and other technical information for MBTA review as required by the Specifications, and with such promptness as to cause no delay in work.
 - 3. The Contractor must maintain a log listing all drawings by number and title and showing dates of preparation, submission, and MBTA’s disposition. The Contractor must submit revised copies of the log to MBTA as required by Technical Specification Section 006.2.
 - 4. The Contractor’s Safety and USCG/Regulatory Liaison or designee must review all design layouts, assembly, and subassembly drawings of Safety Critical features prior to their release for production to assure the safety of crew and maintenance personnel and regulatory compliance.
- C. **Analyses.** The Contractor must submit to MBTA all analyses as required by the Specifications.
- D. **Mock-Ups.** The Contractor must construct and deliver a preliminary cab mock-up, a full-scale vehicle mockup, a roof equipment arrangement mock-up, and an undercar equipment arrangement mock-up, as required by Technical Specifications Section T3 and T7.
 - 1. The MBTA must have the opportunity to inspect the mock-ups at the Contractor’s facility.
 - a. Comments generated during this inspection must be incorporated into the design with MBTA review and approval required for any modifications before any mock-ups are shipped from the Contractor’s facility to MBTA.
 - 2. As directed, the mock-ups must be delivered to an MBTA-designated Boston-area location for final approval and presentation to the public before designs are finalized.

3. Upon MBTA’s direction, the Contractor must remove the mock-ups and store them off MBTA property until the end of the Contract.

5.3. Review of Contractor Submittals

- A. MBTA will review and answer Contractor submittals within the timeframes indicated in Technical Specification Section 007, except for the following:
 1. Operator and Maintenance Manuals and associated vendor information will be reviewed within 60 days after receipt.
 2. The Contractor is encouraged to submit design packages as they are completed, to avoid submitting a large number of submittals at once. Should several major design packages be submitted simultaneously, the Authority may require additional time to complete the review. In such a case, MBTA will review them in accordance with priorities mutually agreed upon with the Contractor.
- B. The Contractor must receive MBTA approval of associated submittals before manufacturing any parts.
- C. MBTA is responsible to adhere to the due date for review of each submittal. The Contractor must notify MBTA with each submittal as to what extent delays in the specific lots of drawings will impact the production schedule.
- D. No extension of Contract time will be allowed for revision of Contractor submittals that have been disapproved by MBTA.
 1. Such documents must be resubmitted and will be reviewed and returned to the Contractor within the same time intervals as would be allotted to them when initially submitted.
- E. Review by MBTA of Contractor submittals does not relieve the Contractor or any Subcontractor of the responsibility for full compliance with the Contract requirements; for correctness of dimensions, clearances, and material quantities; for proper design of details; for proper fabrication and construction techniques; for proper coordination with Subcontractors; or for providing all devices required for safe and satisfactory construction and operation.
- F. Acceptance of the Contractor’s submittals and data by MBTA will be for general detail and arrangement only, and will not relieve the Contractor of any responsibility including for accuracy of dimensions and details. The Contractor remains responsible for agreement and conformity of its drawings and data to the Contract Documents and Specifications.
- G. MBTA may exercise its right of First Article Acceptance as a further review to confirm the validity of the Contractor’s design and shop drawings.

5.4. Project Photographs

- A. At the completion of the first vehicle, three printed sets of color digital format photographs, showing at least fifty views, size 8 in. by 10 in. shall be provided. The Authority’s Inspector will determine the subject matter to be photographed. The electronic copies of the photographs shall also become the property of the Authority.

- B. All costs for the Project Photographs shall be included within the Contract price submitted.
- C. The Authority’s representative(s) shall have the right to take additional photographs of the work with the Authority’s equipment and at the Authority’s expense.
- D. There are additional requirements for Project Photographs found in Technical Specification Section 006.9.

5.5. As-Built Drawings and Schematics

- A. The Contractor must submit as-built drawings and schematics as final record documentation in accordance with section 006.6 of Technical Specification RROPS20-01.
- B. As-built drawings and Schematics must include all information necessary for MBTA to operate, maintain, and repair the Vessels.
 - 1. The level of information and detail must allow MBTA to source any Contractor-provided or Contractor-modified part on the Vessel in the event that the original supplier is not able to provide replacement parts.
- C. As-built drawings and Schematics must incorporate all engineering, manufacturing, and installation changes and reflect the final configuration of the Vessels.
 - 1. All Change Orders and approved deviations from the Technical Specifications must be listed.
- D. Prior to the Delivery of as-built drawings and schematics, MBTA will require drawings, schematics, and procedures for the purpose of maintaining and servicing Vehicles. The Contractor must furnish these within 10 days of such a request.

5.6. Contractor Furnished Materials

The Contractor must prepare and submit Maintenance Instruction Books, Renewal Parts Manuals, Technical Procedures Manuals, Vessel History Books, and all other manuals, instructions and procedures in accordance with Technical Specifications Section 006.

5.7. Conformity with Specifications

- A. No deviation from the Technical Specifications shall be made unless authorized in writing by MBTA through the prescribed Change Order/waiver process.
 - 1. The Contractor must track any open requests for deviation pending resolution on an Open Items Log and submit it to MBTA upon request.
- B. Any change which can affect the Contract cost, Contract time or schedule for completion, or involves a change in material, design, or selection of equipment previously accepted must be addressed by Change Order to the Contract, in accordance with Section 7.00.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

- C. The Contractor must not take advantage of any error or omission in the Contract Documents. In the event the Contractor discovers an error or omission, the Contractor must notify MBTA within three working days. MBTA will make corrections and interpretations as it deems necessary to fulfill the Contract intent.
1. Individual documents comprising the Contract Documents are complementary and are intended to collectively include all items necessary for the proper execution and completion of the work. Anything mentioned in one Contract Document and not another will be of like effect as if shown or mentioned in both.
 2. The Contractor must verify all figures on Authority-provided Contract Drawings, if provided, before commencing the work; promptly notify MBTA of any errors, inconsistencies, or omissions; and obtain specific instructions in writing before proceeding with the work.
 3. Omissions from Contract Drawings or Specifications; or the misdescription of details of work which are manifestly necessary to carry out the intent of the Contract Drawings and Specifications, or which are customarily performed; will not relieve the Contractor from performing such omitted or misdescribed work (no matter how extensive). The Contractor must perform such work as if fully and correctly described in the Contract Drawings and Specifications, at no additional expense or delay to MBTA.

5.8. Access to Work and Records

- A. For the duration of the Contract and warranty period, the Contractor and Subcontractors must give MBTA and its authorized representatives the following access:
1. MBTA must have access to the premises used by the Contractor during normal business hours, or at any time when work is being performed on the Authority’s vessels, and to any plant or place where materials, work, or any part thereof for the Authority’s vessels, are being made, performed, or stored.
 2. MBTA has the right to inspect and audit all project work, facilities, and records, as determined necessary to assess Contractor performance, Contract adherence, and compliance with all federal, state, local, and MBTA requirements.
 - a. The Contractor must coordinate with Subcontractors/Suppliers for MBTA audits on an individual basis.
 - b. At its discretion, MBTA has the right to conduct, or hire an independent specialist third party to conduct, penetration security assessments of Supplier and Contractor software to be supplied under this Contract.
 3. Access to any Contractor or Subcontractor facility by MBTA at any time must be granted for inspection of all accounting and project management records and documents of the Contractor and its Suppliers, relating to any labor, materials, plant, equipment, overhead and other costs used in the performance of work described in any Change Order.
- B. The Contractor must retain project management records, including all accounting records and supporting documentation evidence required to demonstrate compliance with generally accepted accounting principles and the Federal Acquisition Regulation cost standards regarding Change Orders and claims.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

- C. MBTA retains the right to conduct financial audits of the contractor at any time throughout the Contract duration.
- D. The Contractor must provide audited financial statements to MBTA on an annual basis.
- E. The Contractor must ensure each software Supplier maintains documentation of its cybersecurity program, including assessment results, and provides it to MBTA upon request.
- F. The Contractor must insert a clause containing all provisions of this Section, including this paragraph, in all subcontracts of at least \$250,000, altering the clause only as necessary to identify the contracting parties.

5.9. Assigning or Subcontracting

- A. The Contractor must give its full attention to the fulfillment of the Contract and must keep the work under its control, as well as directing, monitoring and coordinating all necessary liaisons between its Subcontractors/Suppliers to ensure the successful completion of the Contract.
- B. The Contractor must ensure that each Subcontractor has a complete copy of the Contract Documents, including the Technical Specifications and all appendices, and that has access to referenced government and industry standards cited in the Specifications.
- C. The Contractor is responsible for the compliance of its Subcontractors/Suppliers with the requirements of all applicable federal, state, and municipal laws, ordinances, rules and regulations; as well as adherence to all MBTA Contract Document requirements.
- D. Every Subcontractor/Supplier of Major Equipment requires MBTA approval. Further, the Contractor must not sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or its right, title, or interest therein, if the cost exceeds 10% of the Contract cost, without MBTA approval.
 - 1. In requesting such approval, the Contractor must notify MBTA of the proposed Subcontractor/Supplier and proposed work to be performed by them.
 - 2. Any consent to sublet any part of the work will not be construed as an acceptance of the subcontract or any of its terms, but only as acceptance of the making of a subcontract between the Contractor and Subcontractor/Supplier.
- E. The Contractor must declare the country (or countries) or origin of each procured hardware and software product associated with each system to be used on the Vehicle, and notify MBTA of any changes in country or origin for a product during the Contract period.
- F. Neither subcontract nor transfer of Contract releases the Contractor of its liability under the Contract and Performance Guarantee.
- G. The Subcontractor will be recognized only in the capacity of an employee or agent of the Contractor.
 - 1. The Contractor is responsible for all liability to persons providing services for payment of charges or related to compensation for services rendered under this Contract.

2. The Subcontractor will look only to the Contractor for the payment of claims arising out of any subcontract. The Contractor must include in all agreements with Subcontractors/Suppliers, as pertaining to this Contract, that its Subcontractor/Supplier will make no claim for payment against MBTA, its members or agents, for any work performed or thing done by reasons of the Subcontract, or for any other cause for payment that may arise by reason of the relationship created between the Contractor and the Subcontractor/Supplier by the subcontract.
- H. The Contractor must maintain and provide to MBTA a list of Subcontractors and Suppliers for all equipment, assemblies, sub-assemblies and components.

5.10. Project Meetings

A. Project Meeting Attendance

1. The Contractor must attend all project meetings to discuss details as required relative to the execution of the work.
2. As MBTA deems necessary, Manufacturers, Subcontractors, Suppliers, Vendors, and other project representatives must attend meetings to discuss relevant aspects of the work.

B. Project Meeting Frequency

1. Project meetings will generally be held per the frequency specified in Technical Specification Section 015. MBTA reserves the right to increase or decrease the frequency of meetings.
2. Additional meetings will be held as required by MBTA, or at the request of the Contractor, as needed.

C. Project Meeting Minutes

1. MBTA will keep minutes of all meetings, including but not limited to the following information:
 - a. Date, time and location
 - b. Attendees, including titles and affiliations
 - c. Subjects discussed, and agreements reached
 - d. Drawings and sketches submitted for review
 - e. Actions taken or assigned
2. Draft minutes will be prepared within the prescribed timeframe and reviewed for any corrections, after which final copies will be retained electronically per established document control procedures.

5.11. Communication and Correspondence Control

- A. All correspondence, conversations, drawings, data, submittals, or other written communications pertaining to this Contract must be in the English language.

1. In order to preclude misunderstandings and delays in the procurement process arising from language differences, MBTA requires that representatives of the Contractor who serve as official liaisons to MBTA be sufficiently fluent and versed in speech, writing, and understanding of the English language so as to facilitate easy and comprehensive communication. MBTA reserves the right of rejection of any representative of the Contractor who is found by MBTA to be so deficient in their ability to communicate in English as to be prejudicial to MBTA’s best interest.
- B. All monies expressed must be in United States dollars.
- C. Official communications in connection with this Contract must be made in writing, and delivered and maintained electronically as required by MBTA.
1. All correspondence and submittals must be made via numbered and coded letter.
 2. Telephone calls, project meetings, discussions, and reviews may be used to expedite communications, but will not be considered official communication unless confirmed in writing.
 3. An updated Correspondence Control Log must be submitted monthly by the Contractor.
 4. MBTA’s project website may automatically extract data from the Contractor’s correspondence submittals. As such, MBTA may require the Contractor to incorporate specific formats, wording, field codes, or other features into its correspondence.

5.12. OEM Software

Upon execution of the Contract, the Contractor shall provide the Agency a list of all OEM software comprising proprietary works (“Proprietary Software”) for all major vehicle subsystems. From time to time and only upon request, information contained within the listed software may be made available to the Agency through the OEM of the vehicle subsystem. The Contractor and OEM are not obligated to provide copies of source code, as this is proprietary intellectual property; however, the Contractor is obligated to assist the Agency with any technical assistance for the duration of the life of the vehicle. It is the Agency’s prerogative to evaluate the long-term viability of the Contractor and its Subcontractors and Suppliers based upon the criteria set forth in “Qualification Requirements.”

6. CONTROL OF MATERIALS

6.1. Quality of Supply

- A. The Contractor shall furnish all materials required for the furnishing and delivery of vehicles in accordance with the Contract Documents, and the materials shall meet the requirements of the Specifications for the kind of applications involving its use.
- B. Unless otherwise provided, only quality materials which are generally accepted in the industry and conform to the requirements of these Specifications shall be used in the work.
- C. The Contractor must report to MBTA in writing any MBTA-supplied items that are lost, damaged or degraded, and is responsible for the costs associated with their repair or replacement.

6.2. Trade Names and Alternatives

- A. **Trade Names.** For convenience in designation on the Plans or in the Specifications, certain articles or materials to be incorporated in the work may be designated under trade names or the names of manufacturers and its catalog information.
1. Specifying a brand name, components, or equipment in the Specifications does not relieve the Contractor from its responsibility to produce the product in accordance with the contractual requirements.
 2. The Contractor must notify MBTA of any inappropriate brand name, component, or equipment called for in the Specifications, and must propose a suitable substitute for consideration.
- B. **Alternative Materials.** It is not the intent of these Specifications to have the Contractor seek acceptance from the Authority for the various interchangeable commodity items of different manufacture that are normally stocked and used by the Contractor. The intent is that alternative materials for Major Equipment be acceptable to the Authority. The use of an alternative article or material which the Contractor represents to be of at least equal quality and of the required characteristics for the purpose intended will be permitted, subject to the requirements of Technical Specification Sections 002.2.4, 002.2.5, 002.2.6, 00.2.2.7, 002.2.8, and the following requirements:
1. The Contractor must furnish all information necessary as required by the Authority to prove the quality and suitability of alternative materials, at no additional cost to the Authority.
 2. The Contractor must bear the cost of all testing required to prove the quality of the proposed material.
 3. All requests by the Contractor regarding the use of an alternative material must be in writing. Such requests must be made in ample time to permit approval without delaying the work.
 - a. Requests must be accompanied by technical information and data substantiating the equivalence of the proposed alternative material to the specified material and demonstrating that it meets Specification requirements.
 - i. Whenever classifications, rating, or other certification by a body, such as UL, NEMA, or AREA, is part of the Specification for any material, Proposals for use of alternative materials shall be accompanied by reports from the listed or equivalent independent testing laboratory indicating compliance with Specification requirements.
 - b. Requests must contain an initial estimate of the effect on the Contract price and schedule of implementing the proposed change.
 - c. Where use of an alternative material involves redesign of or changes to other parts of the work, the cost and the time required to effect such redesign or changes will be considered in evaluating the suitability of the alternative material.
 - d. The Contractor must reasonably demonstrate in its request that an adequate supply of any proposed alternative materials will be available promptly as the need by MBTA may arise.

4. The Contractor must not take action relating to incorporation of the proposed alternative until designs are incorporated by approval of a formal Change Order into the Specifications.
 - a. MBTA may require the removal of any substitute or unaccepted item which is installed by the Contractor without the written acceptance of MBTA.
5. All financial benefits accruing from the substitute materials, components, design, or fabrication shall be split between MBTA and the Contractor on a 70%/30% MBTA/Contractor split respectively.
6. Other than costs established in the approved Change Order, no additional costs will be paid by MBTA as a result of the Contractor using alternatives.

6.3. Patented Devices, Materials, Processes

- A. Where MBTA requires the Contractor to furnish items not designated by brand name, the Contractor warrants that the products furnished are delivered free of any rightful claim of a third party for infringement of any United States or foreign patent.
 1. The Contractor must defend, or may settle, at its expense, any suit or proceeding against the Authority based on a claimed infringement which would result in a breach of this warranty, if MBTA provides authorization, information, and assistance upon the Contractor’s notification to MBTA in writing.
 2. The Contractor must pay all damages and costs awarded against the Authority due to the breach.
 - i. In case any product, or any part thereof, is in such suit held to constitute an infringement and the use for the purpose intended of such product or part is enjoined, the Contractor shall, at its expense and option, either procure for the Authority the right to continue using said product or part; replace it with some non-infringing product or part; modify it so it becomes non-infringing; or remove the product and refund the purchase price, less reasonable depreciation for any period of use and any transportation costs separately paid by the Authority. Any removal should not impact the vehicle’s functionality.
- B. After termination of the Warranty applying to the last Vehicles delivered, the Authority will assume the right to manufacture, or cause to be manufactured, any assembly or component for its sole use in maintaining Vehicles without incurring any obligation to pay any royalties or fees in relation to a letter of patent or copyrights, except when said assembly or component is manufactured by a third party other than the Contractor or the original manufacturer. Except for patented devices, the Contractor will not have exclusive proprietary rights pertaining to the design of the vehicles.
- C. The Contractor shall grant to the MBTA, its authorized successors and assignees, a perpetual fully paid, royalty free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the End Product for MBTA’s purposes of operating, maintaining, and repairing Vehicles.
- D. The Contractor and its Suppliers must not destroy castings, patterns, and forming of extrusion dies at any future date without first offering MBTA the opportunity to purchase them. The Contractor is responsible to notify MBTA in these cases.

6.4. First Article Inspection and Acceptance

- A. Manufacture of First Article parts must not commence until MBTA approves the design.
- B. The Contractor must not schedule more than one FAI per day, unless approved by the Authority.
- C. MBTA has the right to attend any and all FAIs.
- D. If a subject part is not approved at FAI, the Contractor must promptly implement changes to make the subject part compliant.
- E. Major systems which require FAIs are as follows:
 - 1. Hull Repair Materials
 - 2. Decking/Superstructure/Rails and Gates materials
 - 3. Maine Engines and Reduction Gear
 - 4. Generator
 - 5. Jet Drive
 - 6. HVAC
 - 7. Tankage
 - 8. Passenger Furnishings
 - 9. Navigation Electronics
 - 10. Exhaust System
 - 11. Engine Room Fire Suppression System
 - 12. Passenger Information, Passenger Entertainment, CCTV, and Operator Camera Systems
 - 13. (IBA) Inflatable, buoyant apparatus

6.5. Inspections and Tests

- A. Inspections and tests shall be completed in accordance with the requirements of Technical Specification Section 900.
- B. MBTA reserves the right to inspect and approve each component and any completed part of the work before similar work is undertaken to comply with the manufacturing schedule. Any discrepancies or variations from the Specifications or drawings, except those previously approved, must be corrected prior to proceeding with the manufacture and assembly of systems, subsystems or components, or the installation of any such systems, subsystems, and components on the Vessels.

- C. The Contract price is based on conducting all required tests, including necessary retests, as part of the scope of the Contract. Should the Contractor receive a waiver of a test based on the approval of a similar test on similar equipment, MBTA must be credited accordingly.

6.6. Storage of Material and Preparation for Shipment

- A. **Storage of Materials.** All material intended for use on these Vessels shall be marked and stored in the Contractor’s plant so as to be readily identified, and shall be adequately protected during storage, handling and shipment to prevent damage.
- B. **All Shipments.** The following conditions apply to the shipment of all Vessels, equipment, Spare Parts, materials, and other physical assets furnished by the Contractor.
 - 1. The Contractor must notify MBTA prior to shipment of any item.
 - 2. All items must be securely packaged to prevent damage during shipment and handling.
 - 3. If shipped by sea, all materials must be protected against damage from handling or exposure to the marine environment.
 - 4. The Contractor is entirely responsible for any damage that occurs prior to Delivery.
- C. **Shipment of Vessel to the Contractor for Overhaul.** The following additional conditions apply specifically to the shipment of Vessels from the MBTA to the Contractor for overhaul:
 - 1. See Technical Specification Section 902.1 regarding the requirements for a pre-shipment inspection, written report and Release for Shipment.
 - 2. See Technical Specification Section 902.5 regarding the requirements for Receiving Inspection, Contractor’s written report and Authority concurrence.
 - 3. All parts that must be removed to permit shipment and those items not permanently secured to the Vessel shall be securely boxed to prevent damage and shipped in or with the Vessel to which they belong.
- D. **Shipment of Overhauled Vessel to the MBTA.** The following additional conditions apply specifically to the shipment of Overhauled Vessels from the Contractor to the MBTA:
 - 1. Vehicles must not be shipped until Contractor’s authorized representative has certified and received Authority concurrence that all testing at the Contractor’s facilities has been completed as specified in the Technical Specifications.
 - a. Unless specifically excepted by the Contract Documents, and additionally at the sole discretion of the MBTA, each vessel, when shipped from the Contractor's plant to the MBTA shall be complete, ready-to-run.
 - 2. Prior to the shipment of each Vessel, the Contractor shall submit to the MBTA and receive MBTA concurrence on a “Certificate of Inspection Report and Release for Shipment”. Authority

concurrence shall be in the form of a signature from the Authority’s Inspector, or other authorized Authority representative.

- a. The “Certificate of Inspection Report and Release for Shipment” must certify that the Vessel is complete and complies with the approved Contractor’s drawings and samples, and other agreed upon conditions for shipment.
 - b. The “Certificate of Inspection Report and Release of Shipment” shall not, however, be construed nor inferred to constitute to any degree Vehicle acceptance by the Authority.
 - c. The Contractor shall allow one (1) working day for the Authority to complete inspection of each overhauled vessel prior to shipment.
3. If a vessel is complete and ready for shipment prior to the delivery date specified in the Contract, the Contractor shall so notify the Authority. At the Authority’s option, the vessel may be shipped earlier than the date specified in the contract.
4. Preparation for Delivery
 - a. All parts that must be removed to permit shipment and those items not permanently secured to the Vehicle shall be securely boxed to prevent damage and shipped in or with the Vehicle to which they belong.
 - b. All Vessels or components thereof, shall be protected against damage from handling or from exposure to the marine environment.

6.7. Receipt and Delivery of Materials and Vehicles

- A. **Deliveries.** The following conditions apply to the Delivery of all Vessels, equipment, Spare Parts, materials, and other physical assets furnished by the Contractor:
 1. The Contractor must complete and deliver all equipment and materials defined in the Contract Documents, to MBTA, at an Authority approved location in the Boston region, as designated by MBTA.
 2. Delivery must be made per the approved Master Program Schedule and in accordance with the Contract Documents (see Section 1.1.A.1).
 3. The Contractor and MBTA must conduct a joint receiving inspection on each shipment as soon as practical after each arrives on MBTA property. The receiving inspection must confirm that the shipment is complete, and that no obvious damage occurred during shipping.
 - a. MBTA’s representative shall prepare and sign a Receiving Inspection Report for Contractor concurrence, documenting the condition of the shipment, any missing parts or damage and acknowledging receipt of the shipment.
 - b. On receipt of any Receiving Inspection Report which indicates a short shipment or damaged item, the Contractor must promptly fulfill the requirement for any missing equipment and replace any damaged equipment and material to prevent delay of the project.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

“Promptly” means in-stock items are shipped immediately, while the re-manufacture or re-purchase of all other items are initiated without delay.

4. The Contractor must bear all risks of loss to each item until it is delivered to MBTA.
5. Delivery of materials, equipment, Spare Parts, and other physical assets must be made in sufficient quantity and balance to commence with Delivery of the first Vessel. Delivery of materials, Spare Parts, and other physical assets must be completed in conjunction with Delivery of the last Vehicle in the Contract.

B. Vehicle Deliveries. The following additional conditions apply specifically to the Delivery of all Overhauled Vessels furnished by the Contractor:

1. Vessels must be shipped, in accordance with the Delivery schedule (as provided in the Contractor’s Master Schedule), unless otherwise approved by the Authority.
 - a. Hours and days of Vessel Delivery must be approved by MBTA in advance. The Contractor must advise MBTA at least five days prior to each Vehicle’s anticipated Delivery to the designated MBTA location.
2. The Contractor must coordinate all aspects of shipping and Delivery to MBTA facilities.
3. The Contractor must furnish all equipment required to move the Overhauled Vessels and components.
4. The Contractor must notify MBTA of all infrastructure and space requirements for Vessel delivery and commissioning, and shall be responsible for furnishing all equipment required to accomplish these tasks.
5. To be considered Delivered, each Vessel must be received at the designated MBTA facility complete, free from damage, seaworthy and ready-to-test.
 - a. Should the MBTA agree to allow the Vessel to be shipped onto its property with retrofit work to be done, the Vessel shall not, unless otherwise agreed upon by the MBTA, be considered to be "delivered" until the Contractor has satisfactorily completed all such work. The Contractor shall be responsible for all Vessel related costs incurred during the "shipment", "receipt", “delivery” and retrofit, as applicable, of the Vessels.
6. The Contractor is responsible for all Vessel-related costs incurred during the shipment, receipt, delivery and time through Acceptance of the vessel, as applicable.
 - a. It shall be further understood that from the time a Vessel arrives on the Owner's property until such time as the Vessel is Accepted by the Owner for revenue service, the Contractor will be charged for any work performed by the MBTA or its Operating Contractor at the MBTA’s and/or its Operating Contractor’s prevailing rates.
7. When the Contractor determines that each Vessel has arrived on MBTA property in a condition suitable for Delivery, it must be examined jointly by representatives of MBTA and the Contractor.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

MBTA will then issue a “Delivery Confirmation and Receiving Inspection” to the Contractor which acknowledges delivery of the vessel and notes any obvious damage incurred during shipment.

- a. The “Delivery Confirmation and Receiving Inspection” must be signed by MBTA’s representative and the Contractor’s representative to attest to the stated condition of the Vessel and acknowledge receipt of the Vessel.
- b. The “Delivery Confirmation and Receiving Inspection” indicates only that the Vessel was received at the Authority designated location; it does not indicate acceptance of the Vessel.

6.8. Acceptance of Vessels

- A. All costs related to required Acceptance Testing (dock trials, sea trials, post-delivery trials, etc.), including crew costs, are the responsibility of the Contractor.
 1. This would include a Captain, Chief Port Engineer, Port Engineer, and Deck Hand(s) at the prevailing labor rates.
 2. Unless otherwise agreed, if the Contractor cancels testing within 24 hours of test schedule, the Contractor is still responsible for the cost of the test crew and equipment.
- B. MBTA will furnish a disposition for each test to the Contractor within 10 working days of receipt by MBTA of complete test results for each Vessel.
- C. When all acceptance tests required by the Technical Specification are successfully completed, corrective actions and retrofits, if any, have been fully completed, and the Vessel is considered by the MBTA to be in full compliance with the Contract and ready for service, the final Certificate of Acceptance will be executed by the Contractor and the Owner.
 1. Acceptance on behalf of the Owner will be made in writing.
- D. If, the Owner determines that the Vessel is suitable for operation in revenue service, but that it is not totally responsive to the Specification requirements such that substantial delay might be incurred in implementing required corrective action(s), the Owner may, at its discretion, issue a "Certificate of Conditional Acceptance" for the Vessel for mutual execution by the Owner and the Contractor. Such conditionally accepted Vessels shall then be available to the Owner for use in revenue service until such time as the Contractor is able to initiate and execute the necessary correction action(s).
 1. Such “Conditional Acceptance of a Vessel(s)” shall not negate the Contractor’s eligibility for achieving a milestone payment in accordance with the Schedule of Partial Payments Section 8.2.
- E. Warranty shall commence upon Conditional Acceptance of each Vessel in accordance with Section 5.2 except for those parts requiring corrective action. The warranty of such parts shall commence when such parts are installed and tested to the satisfaction of the Owner.
- F. From the time each overhauled Vessel is delivered, until it is Accepted by MBTA, the Contractor is responsible to perform all servicing, maintenance, and repair work on the Vehicle.

1. Any work performed by MBTA personnel (or personnel of the MBTA’s contracted operator) on behalf of the Contractor will be charged at the prevailing rates.

6.9. System Support Services and Materials

- A. The Contractor must furnish the services of one qualified, factory trained, English-speaking, Field Service Engineer during inspection, testing and adjustment of the Contractor-furnished equipment, to ensure satisfactory performance.
- B. All system support materials, including but not limited to manuals, instruction sheets, and parts lists which the Engineer requires must be furnished per the requirements of Technical Specification Section 006.7.

6.10. Operator and Maintenance Trainings

- A. The Contractor shall provide operator and maintenance training per the requirements of Technical Specification Section 020.
- B. All costs associated with providing Training Sessions, except as otherwise defined in the Contract Documents, must be borne by the Contractor.
 1. The Contractor must replace any consumables and re-establish the condition of any parts damaged as a direct result of Training Sessions.

6.11. Equipment and Special Tools

- A. The Contractor must furnish Portable Test Units (PTUs) per the requirements of Technical Specification Section 021.1.
 1. PTEs must be delivered concurrently with the first overhauled vessel.
- B. The Contractor must submit PTE documentation to MBTA for review and approval as follows:
 1. Each PTE, including a laptop computer used as a PTE, must be furnished with an instructional manual that describes how to use the PTE along with expected results.
 2. Each PTE must be furnished with instructions for setup and calibration. For computer- based PTEs, this must include a description of all parameter settings for the computer.
 3. Each PTE must be furnished with instructions of how to troubleshoot and repair the PTE.
 4. Each PTE must contain all the required software to test the relevant subsystems.
 5. Non-computer-based PTES must include complete parts lists and schematic diagrams.
 6. 3 additional sets of USB drives containing software for each program installed in a PTE must be furnished when the PTEs are delivered.
 - a. If the a new software revision for the PTE program software is released prior to the end of the second vessel’s warranty, the Contractor shall be responsible for updating the PTE software to the latest revision at no additional cost to the MBTA.

- C. The Contractor must furnish special tools and fixtures per the requirements of Technical Specification Section 021.2.
- D. The Contractor must furnish perpetual software license for all test equipment applications.

6.12. Spare Parts

A. General:

1. The Contractor must make all reasonable efforts to ensure availability of replacement parts for the Vehicles for a minimum of ten (10) years after the date of acceptance. Spare parts shall be interchangeable with the original equipment and must be manufactured in accordance with the Quality Assurance Provisions in this Contract.
2. If a part is not available through the Contractor and has no competitive equivalent available in the marketplace, the Contractor must assist the Authority in developing drawings and specifications to facilitate the component procurement by the Authority within 180 days of Contractor or Authority identifying that part is not available.
3. All Spare Parts, Capital Spares, and Consumable Spare Parts must be clearly and precisely labeled.
4. Spare Parts must be interchangeable with their corresponding part numbers.
5. All Spare Parts must be reconfigured to the latest revision during the Warranty period.
6. The Contractor must make all efforts to have available at least two U.S. sources for Spare Parts.
7. Packaging must consider the reliability of the parts and the requirements for inspection and inventory (e.g., packaging selected for highly reliable parts must be such that the parts can be identified, inspected, stored for long periods, and endure multiple inventories).
8. The Contractor must submit a recommended Spare Parts list which includes the following:
 - a. Grouping by system, or subsystems, as applicable, for stocking identification.
 - b. Generic name, trade name, description, Contractor's part number, Contract Price, Manufacturer/Vendor/Supplier names and part numbers (if not directly produced by the Contractor), drawing references, and correlation with maintenance manuals.
 - c. Recommended quantities correlated with reliability requirements and lead time, based on the following classifications:
 - i. Wear: parts that may be expected to require regular replacement under normal maintenance schedules
 - ii. Consumables: parts with an expected life of less than one year based upon expected annual mileage of 75,000 miles per vehicle
 - iii. One Shot: parts that normally require replacement after performing their function single time

- iv. Long Lead: parts that are not readily available from distributors or manufacturers
 - v. Exchange Assemblies: Assemblies that will be exchanged with failed units (or units that are not responding as specified) on the supplied equipment and that must be inventoried as complete assemblies
 - d. A cross-reference and indexing system for replacement components common to more than one system (or subsystem). Such components must have only one part number
9. The Contractor must support the Vessel testing with appropriate Spare Parts and other materials as required.

B. Capital Spare Parts:

- 1. The Offeror shall provide prices for the furnishing and delivery of Capital Spare Parts in Attachment 4: Price Proposal.
- 2. At least 60 days prior to delivery of the first overhauled vessel, the Contractor must submit for MBTA’s approval a Delivery schedule for the Capital Spares. Shipment of the selected Capital Spares shall commence with the acceptance of the first Vessel.
- 3. Prior to the delivery of the first Vessel, the Contractor shall provide an opportunity for the owner to confirm quantities and line items to be provided as capital spare parts. As a result of any design modifications confirmed and approved during testing, MBTA reserves the right to negotiate the quantity of Capital Spares to be supplied within the cost parameters established under the Price Response.
- 4. MBTA’s intent is to minimize the need to retrofit Capital Spares. Any retrofit, if so required, must be implemented at the Contractor’s expense.
- 5. Shipment of the selected Capital Spares shall commence with the acceptance of the first Vessel.
- 6. Upon Delivery of Capital Spares the Contractor must provide the following details:
 - a. Part Number information and Vendor/Manufacturer/Supplier name.
 - b. Line item quantities and unit price per line item.

- C. Consumable Spare Parts.** The Contractor must submit a Consumable Spare Parts List, including U.S. sources for each. This list shall include car builder, OEM, and sub-vendor part numbers as applicable. If necessary, component SDS documentation will be provided.

7. CHANGE ORDERS

7.1. Proposed Changes in Work Scope (Change Orders)

- A. MBTA may, at any time, direct and implement changes in work scope within the general scope of this Contract by issuing a written Change Order.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

- B. The Contractor must promptly make such additions, deletions, or changes in the work when and as ordered in writing by MBTA.
- C. The Contractor may, at any time, submit to MBTA in writing, for review and acceptance or denial, proposed modifications to the Contract Documents which will benefit MBTA.
 - 1. MBTA will review and may accept such modifications. Upon acceptance by MBTA of the proposed changes, MBTA will execute and issue a Change Order.
 - 2. Denial of a proposed modification will neither provide the Contractor with any basis for claim for damages nor release the Contractor from contractual responsibilities.
- D. Unless specifically noted in the Change Order, a change in work will not extend the time of completion of the Contract, change the Contract Price, nor amend the terms and conditions of the Contract Documents.
- E. Where changes require the cooperation of one or more Manufacturers or Suppliers, the Contractor is responsible for such changes and must inform the Manufacturers and Suppliers accordingly, and the changes must be incorporated in both vessels unless otherwise agreed to by MBTA.
- F. MBTA’s apparent waiver of, or failure to enforce, the provisions within Section 7.4 for any change in scope of work is not a waiver of requirements of this Section for any other change.

7.2. Costs for Work Scope Changes

- A. Upon receipt of an issued Change Order, the Contractor must, within ten (10) working days, give written notice to MBTA with preliminary determination of how the proposed changes will impact the Project Schedule or Contract Price.
- B. Within 30 days of receiving the Change Order, the Contractor must submit a written Notice to MBTA containing the following information:
 - 1. Description of change and details of work to be done.
 - 2. A statement and justification for any additional time required for the completion of the Contract by reason of the Change Order. The statement of additional time must include a detailed schedule analysis identifying which schedule activities and key milestones are impacted.
 - 3. Comprehensive detail on pricing and costing for Change Order, as per the following:
 - a. Prices must comply with the standards of the Federal Acquisition Regulation (FAR) Part 31 and be based on generally accepted cost standards as established under the (FAR), to include material, labor, overhead and profit.
 - b. The cost detail should be comprehensive and readily traceable into the Contractor's accounting records and underline supporting documentation.
 - c. The Contractor's profit must be disclosed separately, so that a judgment can be made relative to the reasonableness given the technical level of work and the associated risk.

- d. Prices shall be quoted in United States of America dollars (no cents) on a per vehicle basis.
 - e. The comprehensive detail shall include specific information for each type of cost.
 - i. The analysis for labor shall disclose hours by phase/function and total for each employee category. Total hours for each employee category shall be multiplied by the appropriate actual pay rate to compute total labor cost.
 - ii. Materials must be analyzed by type with full description, number of units, unit cost, hours used, hourly cost rate, and total costs.
 - f. Estimated costs shall be approved subject to auditing actual costs at the completion of performing change order services.
- C. Whenever the estimated cost of a change or series of related changes exceeds \$100,000, the Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change.

7.3. Change Order Authorization

- A. A Change Order must receive the written acceptance of the Contracting Officer if it involves:
 - 1. A change to the project timeline or Project Schedule;
 - 2. A change to the Contract Price; or
 - 3. A substantial technique change, including any departure from the Technical Specification or any change to accepted material, design, or equipment.
- B. The Contractor must not proceed with any work out of the scope of the Contract until MBTA gives written authorization.
- C. MBTA will not accept any responsibility for work or services performed without proper authorization.

7.4. Executed Change Orders and Amendments

- A. All Change Orders must be executed in accordance with the terms and conditions of the Contract Documents and the Authority's Policies and Procedures.
- B. All executed Change Orders will become part of the Contract and will constitute the entire agreement between the Authority and the Contractor with regard to any and all costs and time extensions related to Change Order work.
- C. All terms and conditions of the Contract Documents, including the Specifications, remain as previously stated unless so noted in the text of an executed Change Order.
- D. The Contractor must issue invoice for executed Change Order(s) on a per vehicle basis at the milestone corresponding to the Conditional Acceptance of said vessel or at the Conditional Acceptance of the

incorporation of the defined workscope, whichever occurs last. Payment will be made in accordance with Section 3 – Liquidated Damages.

7.5. Change Status Report

The Contractor shall maintain a record of all Engineering and contractual Change Orders that have been submitted and/or accepted by the Authority.

- A. Changes must be logged and listed on a Change Status Report that identifies the action taken on each change. The Change Status Report shall be updated at the request of the Authority as changes occur and copies must be submitted to the Chief Procurement Officer, the Project Manager/Engineer, and the Consultant.
- B. A separate report shall be prepared and updated quarterly showing the original and revised Contract cost per vehicle delineating all additions on a per item and per Change Order basis, with the format of the report to be approved by the Chief Procurement Officer.

8. MEASUREMENT AND PAYMENT

8.1. Terms of Payment

- A. MBTA will make all payments to the Contractor in United States Dollars.
- B. Payment for vessel overhauls will be made by check, wire transfer, or ACH within 30 days after receipt of properly prepared Contractor’s invoice and upon completion of the milestone corresponding to the payment due.
- C. Milestones will be achieved and become eligible for payment as outlined in Section 8.2.
- D. In no event shall the amount of invoices to MBTA at the time of each milestone exceed the amount authorized by the Contract to that date.
- E. The Contractor must provide a certificate at the time of each milestone, certifying the invoice amount is true and accurate, the milestone has been achieved, and the cumulative amount invoiced by the Contractor to date does not exceed the amount listed in Section 9.2. Invoices must be submitted with a complete package demonstrating milestone achievement.
 - 1. Documentation must be on file with the Contractor and forwarded, if requested by MBTA, to support the actual milestone costs.
 - 2. The Contractor must maintain books and records as related to this program in such a manner that supports the actual Contract costs incurred.
- F. If an audit discloses any payments have been made for milestones not achieved, this excess must be returned to MBTA and will be remitted to the Contractor at such time as the milestone has been achieved.
- G. The Contractor must maintain a Milestone Payment Tracker indicating progress of payments based on milestones.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

1. The Milestone Payment Tracker must provide a projection of future milestone dates and corresponding progress payments.
2. The Contractor must first submit the Milestone Payment Tracker with the first progress payment, and then must update and submit it quarterly to MBTA.

8.2. Schedule of Partial Payments for Base Award

- A. Capital Spare Parts will not be a part of, or submitted in, the following Schedules of Partial Payment. Spare Parts will be invoiced separately and paid upon delivery.
- B. MBTA will pay the Contractor in accordance with the following Partial Payment Schedule and corresponding deliverables in the Contract Deliverable Requirement List (CDRL) provided in Technical Specification Appendix E.
- C. The Contractor is required to submit a Proposal Price(s) based on the following Payment Schedule:

Schedule of Partial Payments

Payment Milestones shall be invoiced no more frequently than once per month.

Paymt #	Payment Milestone	Per Milestone		Cumulative	
		%	\$s	%	\$s
A	Approval of Master Program Schedule and production schedules and submittal of project management and quality assurance program plans	5.00%		5.0%	
B	Design Review Milestones - successful completion & approval (can be completed in any order, but item B for a component must precede items C and D for that component)	11.50%		16.50%	
	B1 Decking/Superstructure/Rails and Gates Design Review				
	B2 Hull Repair Design Review				
	B3 Main Engine and Reduction Gear Overhaul				
	B4 Generator & Integration Design Review				
	B5 Jet Drive Design Review				
	B6 HVAC Design Review				
	B7 All Tankage Design Reviews				
	B8 Passenger Furnishings Design Review				
	B9 Approval of Navigation Electronics & Pilothouse Console Mock-Up Design Review				
	B10 Exhaust System, Engine Room Fire Suppression System Design Review				
	B11 Passenger Information, Passenger Entertainment, CCTV & Operator Camera Design Review				
	B12 IBAs Design Review				

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

Paymt #	Payment Milestone	Per Milestone		Cumulative	
		%	\$s	%	\$s
C	Proof of purchase orders for major equipment & materials – Vessel 1:	7.00%		23.5%	
	C1 Hull Repair Materials				
	C2 Decking/Superstructure/Rails and Gates Materials				
	C3 Engines & Reverse/Reduction Gear Overhauls				
	C4 Waterjet Overhaul				
	C5 Generator Overhaul & Purchase				
	C6 Passenger Furnishings				
D	First Article Inspections - Successful completion & approval (can be completed in any order, but item B for a component must precede items C and D for that component)	12.50%		36.00%	
	D1 Hull Repair Materials				
	D2 Decking/Superstructure/Rails and Gates Materials				
	D3 Main Engine and Reduction Gear FAI				
	D4 Generator FAI				
	D5 Jet Drive FAI				
	D6 HVAC FAI				
	D7 Tankage FAIs				
	D8 Passenger Furnishings FAI				
	D9 Navigation Electronics FAIs				
	D10 Exhaust System, Engine Room Fire Suppression System FAIs				
	D11 Passenger Information, Passenger Entertainment, CCTV & Operator Camera Systems FAI				
	D12 IBA FAI				
E	Structural Work - Successful completion & approval - Vessel 1	7.00%		43.00%	
	E1 Completion of Hull & Splashguard Repairs				
	E2 Completion of Decking / Superstructure / Rails / Void Overhead and Gates Repair & Construction				
F	Approval of service support documentation, training, special tools, and equipment required to support the vessel.	4.00%		47.00%	
	F1 Approval of service support documentation and equipment, including all manuals, special tools, and equipment required to support the vessel.				
	F2 Approval of Warranty Plan				
	F3 Completion of Operator Training				

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

Paymt #	Payment Milestone		Per Milestone		Cumulative	
			%	\$s	%	\$s
	F4	Completion of Maintenance Training				
	F5	Receipt of final as-built drawings and all maintenance manuals and maintenance documentation				
G	Vessel Testing, Delivery & Acceptance - Vessel 1		18.00%		65.00%	
	G1	Successful completion of all sea trials at Contractor's facility, pre-shipment inspection by Owner, and receipt of approval to ship to Owner.				
	G2	Delivery of vessel to Owner				
	G3	Conditional Acceptance by Owner, including successful completion of all testing required at Owner's service area.				
	G4	Receipt of all required certifications and Coast Guard Approval				
H	Proof of purchase orders for major equipment & materials - Vessel 2		7.00%		72.0%	
	H1	Hull Repair Materials				
	H2	Decking/Superstructure/Rails and Gates Repair Materials				
	H3	Engines & Reverse/Reduction Gear Overhauls				
	H4	Waterjet Overhaul				
	H5	Generator Overhaul & Purchase				
	H6	Passenger Furnishings				
I	Structural Work - Successful completion & approval - Vessel 2		7.00%		79.00%	
	I1	Completion of Hull & Splashguard Repairs				
	I2	Completion of Decking/Superstructure/Rails/Void Overhead and Gates Repair & Construction				
J	Vessel Testing, Delivery & Acceptance - Vessel 2		18.00%		97.00%	
	J1	Successful completion of all sea trials at Contractor's facility, pre-shipment inspection by Owner, and receipt of approval to ship to Owner.				
	J2	Delivery of vessel to Owner				
	J3	Conditional Acceptance by Owner, including successful completion of all testing required at Owner's service area.				

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

			Per Milestone		Cumulative	
Paymt #	Payment Milestone		%	\$s	%	\$s
	J4	Receipt of all required certifications and Coast Guard Approval				
K	Successful completion of the contract, including, but not limited to closeout of all open items. Completion of all outstanding retrofits for all vessels, delivery of all Capital Spares, Special Tools, and completion of all administrative and technical matters with the exception of the warranty program.		2.00%		99.00%	
L	Completion of Warranty		1.00%		100.00%	
			100.00%			

All milestones will be paid in sequence except as indicated above.

8.3. Schedule of Partial Payments for Options

- A. MBTA will pay the Contractor for OPTION 1, if exercised, in accordance with the following Partial Payment Schedule, and separately from the Milestone Payment Schedule in Section 8.2B:

Paymt	Payment Milestone	% Per Milestone	Cumulative %
i	Completion of Design Review	10%	10%
ii	Completion of FAI	45%	55%
iii	At Conditional Acceptance of the Vessel	45%	100%

8.4. Payment for Change Orders

- A. In accordance with Section 7.0 the Contractor must prepare invoices for approved Change Orders on an individual vessel basis and become eligible for payment at the time of Conditional Acceptance of each Vehicle.

9. CONTRACT TERMS AND CONDITIONS

Upon execution by the Contractor, these Terms and Conditions will be incorporated by reference into any Contract executed by the Contractor and the Massachusetts Bay Transportation Authority (MBTA), in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the MBTA, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The MBTA is entitled to ownership and possession of all deliverables purchased or developed with MBTA funds.

9.1. Contract Effective Start Date

Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the MBTA, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

9.2. Personal Liability of Authority Official

In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them or within the scope of the Contract, there shall be no liability upon the Board of Directors, the Director of Materials Management, or authorized representatives thereof, either personally or as officials of the MBTA, it being understood that in all such matters they act solely as agents and representatives of the MBTA.

9.3. Hiring of MBTA Retirees

Bidder shall certify that, if awarded the Contract, it will comply with the MBTA’s Hiring of Retirees Policy. The MBTA’s Hiring of Retirees Policy prohibits the Authority from contracting with the MBTA retiree or an employment agency for the MBTA retiree’s direct services. Bidder’s requirements are stated herein. The Bidder is required to notify the MBTA as part of the bidding process that a MBTA retiree will be included as a member of its team. The Bidder shall provide the name and date of retirement of each MBTA retiree on the team. Every MBTA retiree working for the MBTA under this condition shall do so in accordance with M.G.L., Chapter 268A, Section 5. After award, Bidder is required to provide immediate notification of the arrival or departure of all MBTA retirees, and periodic updates upon request by the MBTA, throughout the life of the contract.

9.4. Headings Not Binding

The headings appearing at the beginning of the articles, sections, parts, paragraphs or subparagraphs in this Contract have been inserted for identification and reference purposes only.

9.5. Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the Contractor and the MBTA.

9.6. Precedence of Documents

The contract shall consist of the documents detailed below. In the event of any inconsistency between any requirement and provision of the Contract, the inconsistency shall be resolved by giving precedence, in descending

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

order, to the following:

1. Contract Documents
 - a. Form of Contract and any executed Change Orders and Amendments.
 - b. Addendum(a) and/or Proposal Modification & Clarification Guideline(s) to the Contract Documents RFP Contractual Provisions, General Requirements and Covenants for Equipment Procurement and Standard Equipment Procurement Specifications including Attachments
 - c. General Requirements and Covenants for Equipment Procurement and Standard Equipment Procurement Specifications including Attachments
 - d. Technical Specification
 - e. Contract Drawings
 - f. Bonds/Certificates, Certificates of Insurance, Affidavits and other forms as pertinent
 - g. Contractor’s Proposal
2. Change Order(s) & Amendment(s)

Any Change Order and Amendment that is subsequently executed shall make reference to become a part of this Contract and shall take precedence as applicable.

The Contractor shall not take advantage of any apparent error or omission in the Contract Documents. In the event the Contractor shall discover such an error or omission, the Authority shall immediately be notified. The Authority shall then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract.

The individual documents comprising the Contract Documents are complementary and are intended to describe the work. Anything mentioned in the Specifications (Technical Provisions) and not shown on the Contract Documents, or shown on the Contract Documents and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work.

The Contractor shall verify all figures on the Contract Drawings before commencing the work; shall promptly notify the Engineer of any errors, inconsistencies, or omissions which may be discovered; and obtain specific instructions in writing before proceeding with the work. Omission from Contract Drawings or Specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the Contract Drawings and Specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted work (no matter how extensive) or misdescribed details of the work and they shall be performed as if fully and correctly set forth and described in the Contract Drawings and Specifications at no additional expense or delay to the Authority.

9.7. Payments and Compensation

The Contractor shall only be compensated for performance delivered and accepted by the MBTA in accordance with the specific Terms and Conditions of a Contract. Overpayments shall be reimbursed by the Contractor or may be offset by the MBTA from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the MBTA from all claims, liabilities or other obligations relating to the performance of a Contract.

9.8. Contractor Payment Mechanism

All Contractors will be paid using the MBTA invoicing system and Contractor will submit its invoice with all supporting documentation as prescribed in a Contract. The MBTA shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection, provided that payment periods listed in a Contract of less than thirty (30) days from the date of receipt of an invoice shall be effective only to enable the MBTA to take advantage of early payment incentives and shall not subject any payment made within the thirty (30) day period to a penalty.

9.9. Contract Termination, Suspension, Force Majeure

A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor.

1. Termination by MBTA

The MBTA may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate MBTA action.

The Contractor shall be paid its costs, including Contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid by the Authority. If the Contractor has any property in its possession belonging to the Authority, the Contractor shall account for the same, and dispose of it in the manner the Authority directs.

2. Force Majeure

Upon immediate notification to the other party, neither the MBTA nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence ("Force Majeure Event"). Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

Within thirty (30) calendar days after the last day of delay resulting from a Force Majeure Event, the Contractor shall furnish the MBTA with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Agreement references, and the measures taken to prevent or minimize the delay. Upon review of the detailed information concerning the delay, the MBTA shall assess the impact the delay may have on price and schedule of the work and modify the Contract as needed in accordance with (Change Order).

3. Termination for Cause

If the work to be done under this Contract, or if the performance of the Contract is unnecessarily or unreasonably delayed by the Contractor; or if the Contractor is violating any material term of the Contract Documents; or the Contractor is not executing the same in good faith or in accordance with the term thereof; or if the Contractor shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, the Authority may give notice, in writing, to the Contractor and its surety of such delay, neglect, or default, specifying the same; and, if the Contractor shall not proceed to cure the delay, neglect, or default within a period of twenty-one (21) days after such notice, then the Authority, because of such delay, neglect, or default, and the Contractor's failure to comply with such notice shall have full power and authority to:

- A. Declare the Contractor to be in default; and the Authority may thereupon notify the Contractor, by written notice at least 21 calendar days prior to the effective date of such termination, to discontinue all work, or any part thereof, under this Contract; and thereupon the Contractor shall discontinue the work, or such

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER "T" FERRIES

part thereof, and the Authority shall have the right, as the Authority may determine, to have the surety complete the work or to contract for the completion of the work, or such part thereof, to procure other materials, plant, tools, appliances, equipment, suppliers and property for the completion of the work, or such part thereof, and to charge the expense of said labor and materials, plant, tools, appliance, equipment, supplies and property to the Contractor.

The expense so charged may be deducted and paid for by the Authority out of such monies as may be due or at any time thereafter become due to the Contractor under and by virtue of this Contract, and the Contractor shall, upon completion of the work, or such part thereof, or from time to time during the course of the completion of the work, or such part thereof, as the Authority may require, forthwith pay to the Authority the excess, if any, of the cost to the Authority of the completion of the work, or such part thereof, over the amount payable to the Contractor for the same work and materials under the terms of this Contract; provided, however, that the Contractor shall not be liable to the Authority for any damages incurred solely by reason of the fault of a new Contractor engaged by the Authority or the Contractor's surety; and the completion of the work, or such part thereof, by the Authority shall not release or discharge the Contractor from liability for the remainder of the work hereunder; and when any particular part of the work is being carried on by the Authority by Contract or otherwise under the provisions of this Paragraph "A", the Contractor, unless directed to discontinue all work, shall continue the remainder of the work in conformity with the terms of this Contract and in such manner not to hinder or interfere with other Contractors of the Authority, or with persons or workmen employed, as above provided by the Authority by Contract or otherwise, to do any part of the work or to complete the same under the provision of this Paragraph "A"; or

- B. Declare this Contract at an end, except as to the liability of the Contractor hereinafter in this paragraph provided for, and the Authority shall thereupon have the right to have the surety contract the work or to contract for the completion of the work, to procure other materials, plant, tools, appliances, equipment, supplies and property for the completion of the same.
 - i. If the expense to the Authority of completing the work (including the expense of procuring other materials, plant, tools, appliance, equipment, supplies and property) shall exceed that amount which would have been payable to the Contractor for the same work and materials under this Contract had the Contractor completed the Contract, the Contractor shall, upon completion of the work, as the Authority may require, pay the amount of the excess to the Authority.
 - ii. The Contractor shall also pay to the Authority the amount of any claim for which the Authority may be liable for injury to persons or property occurring on account of any work done by the Contractor under this Contract, by reason of negligence, fault or default of the Contractor, or for infringement of patents, or for any neglect, fault, or default of the Contractor, as herein above set forth, and shall also pay to the Authority the amount of any payment which the Authority may be required to make, and the amount of any loss or damage which the Authority may incur or suffer, and for which the Contractor may be liable by any neglect, fault or default of the Contractor; and
 - iii. Transfer title to the Authority and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated, and the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been furnished to the Authority.
- C. The Authority may also proceed as it deems proper upon the bonds or other security in its possession; and

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER "T" FERRIES

- D. The Authority may also bring any suit or proceeding for specific performance, injunction, or to recover damages, obtain any other relief, or for any other purpose proper under this Contract.

4. Suspension of Work

- A. The Authority, for reasons beyond its control, may at any time, by written order to the Contractor, stop all or any part of the work called for by this Contract for a period of thirty (30) days upon delivery of the order to the Contractor and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to mitigate the costs allocable to the work covered by the order during the period of work stoppage. Within a period of thirty (30) days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Authority shall either:
 - i. Cancel the Stop Work Order; or
 - ii. Terminate the work covered by such order and pay to the Contractor all reasonable termination charges.
- B. If a Stop Work Order issued under this Section is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment will be made in the delivery schedule or Contract price, or both, and the Contract will be modified in writing accordingly, if:
 - i. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, their performance of any part of this Contract; and
 - ii. The Contractor asserts a claim for such adjustment within thirty days after the end of the period of work stoppage; provided that, if the Authority decides the facts justify such action, the Contractor may receive and act upon such claim asserted at any time prior to final payment under the Contract.
- C. If a Stop Work Order is not canceled and the work covered by such order is terminated hereunder, the reasonable costs resulting from the Stop Work Order will be allowed in arriving at the termination settlement.

9.10. Written Notice

Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the MBTA or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

9.11. Record-keeping and Retention, Inspection of Records

The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The MBTA shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business

hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

9.12. Assignment

Neither the Contract nor any interest herein shall be assigned, pledged or otherwise transferred by the Contractor without the written consent of the MBTA, except in the case of a transfer of all or substantially all of the Contractor's assets provided that all obligations of this Contract are assumed by the controlling entity. If the Contractor makes any such assignment, pledge or other transfer without the written consent of the MBTA, the Contract shall be voidable at the election of the MBTA. The MBTA's consent to any such assignment, pledge or other transfer may impose such additional conditions thereon as may be deemed necessary to ensure the performance of the terms of the Contract by the assignee. Moreover, unless otherwise agreed to in writing by the MBTA, any transfer by the Contractor shall not release the Contractor of its liability under the Contract. The sale of fifty percent (50%) or more of the equity ownership of a Contractor shall be considered an assignment requiring the prior written approval of the MBTA.

9.13. Subcontracting By Contractor

The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the MBTA will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. Subcontracts shall note that the MBTA is not a party to the subcontract.

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or its right, title, or interest therein, if the cost exceeds 10% of the Contract amount, or if the Subcontractor/Supplier is to supply any of the major systems without written consent of the Authority. In requesting such consent, the Contractor shall notify the Authority of the work to be performed by the proposed Subcontractor/Supplier and the Subcontractor's/Supplier's name.

The Subcontractor (Vendor or Supplier) shall look only to the Contractor for the payment of the claims arising out of any subcontract. The Contractor shall include in all agreements with Subcontractors/Suppliers, as pertaining to this Contract, that its Subcontractor/Supplier shall make no claim for payment against the Authority, its members or agents, for any work performed or thing done by reasons of the Subcontract, or for any other cause for payment that may arise by reason of the relationship created between the Contractor and the Subcontractor/Supplier by the Subcontract. Failure to promptly pay a Sub-Contractor for work performed where the Contractor has been paid by the MBTA shall constitute a material breach of the Contract between MBTA and Contractor.

The Contractor shall provide the Authority a list of Subcontractors and Suppliers for all equipment, assemblies, sub-assemblies and components supplied for this program.

9.14. Affirmative Action, Non-Discrimination in Hiring and Employment

The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing

supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

9.15. Indemnification

The Contractor agrees to indemnify, save harmless, and defend the MBTA and all of its officers, agents, and employees from and against any and all third party suits, claims, or proceedings (“Claims”), and any losses, damages, charges or expenses, whether direct or indirect, and liability of every name and nature related to such Claims (“Liabilities”) for or due to any loss or injury to persons or damages to real or tangible property to the extent caused by the Contractor or its employees, subcontractors or agents.

The MBTA agrees that the Contractor shall not be responsible for any Claims or Liabilities that may be imposed upon or incurred by or asserted against the Contractor to the extent that those Claims or Liabilities are caused by any negligent act or negligent failure to act by MBTA or its agents, employees, or subcontractors.

The Contractor being bound by all applicable state and federal regulations hereby expressly agrees to hold the MBTA harmless against all audit exceptions or denials of the reimbursement arising from the Contractor's violation of the terms and conditions of state and federal laws. The Contractor shall make restitution to the MBTA of such amounts of money as are withheld from the Authority by state, federal, county or local agencies or organizations due to the Contractor's noncompliance with applicable state and federal law, provided that in the event of any claim for such restitution, the MBTA provides the Contractor with prompt notice of such claim and allows the Contractor to contest such claim. Restitution shall be made no later than sixty (60) days after receipt of notification from the MBTA that monies are due to the MBTA.

Defense of Indemnification. The Contractor shall be notified in writing by the MBTA within a reasonable period of time of the assertion of any Claim against it that the Contractor has agreed to indemnify above (the “Indemnified Claim”). If the MBTA decides to itself conduct the defense of an Indemnified Claim against it or to conduct any other response itself, the Contractor shall reimburse the MBTA for all reasonable costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses) incurred by the MBTA in connection with the MBTA’s defense of the Indemnified Claim against it and/or the conduct of all response actions. If the MBTA decides to have the Contractor defend the Indemnified Claim or handle the response action, the MBTA shall notify the Contractor of that decision in writing. In such instances, the Contractor shall bear the entire cost thereof and shall have sole control of the defense of any Indemnified Claim and all negotiations for its settlement or compromise provided that the MBTA is fully indemnified by the Contractor and that the settlement or compromise shall not include the admission of guilt or comparable plea, wrongdoing or negligence, the permitting or imposition of civil or criminal penalties or indictments, the entering of consent decrees or orders of any kind by the Contractor on behalf of the MBTA, or any other action that would materially prejudice the rights of the MBTA without the MBTA’s express written approval. The MBTA shall cooperate fully with the Contractor in the defense of any Indemnified Claim.

9.16. Waivers

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor shall it in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

9.17. Risk of Loss

Risk of loss or damage with respect to equipment or material covered by the Contract Documents shall pass to the Contractor upon mutual signature of the pre-shipment inspection of the vessel prior to overhaul. After overhaul, risk of loss or damage shall pass to the Authority upon mutual signature of the Delivery Confirmation and Receiving

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

Inspection subsequent to the receipt of the vessel or materials on MBTA property, unless the loss or damage is determined to be the direct result of faulty workmanship by the Contractor or by faulty material supplied by the Contractor.

Title to the Authority's equipment shall remain in the Authority and shall not be divested by any repairs that may be made to the property of the Authority.

9.18. Forum, Choice of Law and Mediation

Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The MBTA and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

9.19. Interpretation, Severability, Conflicts with Law, Integration

Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these MBTA Terms and Conditions, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 1.1.1 of these MBTA Terms and Conditions (Section 1.1). The printed language of the Standard Contract Form (Section 7), which incorporates by reference these MBTA Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: any applicable federal provisions, any supplemental provisions, any negotiated terms and conditions allowable pursuant to law or regulation; the printed language of the MBTA Terms and Conditions; the Standard Contract; the MBTA's Request for Response/Proposal/Bid (RFR/RFP/IFB) solicitation document; and the Contractor's Response to the RFR/RFP/IFB solicitation, excluding any language stricken by the MBTA as unacceptable.

9.20. Entire Agreement

This Agreement and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire Agreement between the Contractor and the MBTA (hereinafter the “Parties”) and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, oral or written, and is not intended to confer upon any person other than the Parties any rights or remedies hereunder.

9.21. Contractor Certifications and Legal References

The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein.

9.21.1. MBTA and Contractor Ownership Rights

The Contractor certifies and agrees that the MBTA is entitled to ownership and possession of all “deliverables” purchased or developed with Contract funds.

9.21.2. Qualifications

The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State’s website as licensed to do business in Massachusetts, as required by law.

9.21.3. Business Ethics and Fraud, Waste and Abuse Prevention

The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

9.21.4. Collusion

The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

Included with the response to RFP 109F-20, the Bidder shall sign an affidavit stating that Bidder understands that any Proposal submitted to the MBTA is made without collusion with any other Bidder submitting a Proposal on the same commodity/service, and is in all respects fair and without fraud.

9.21.5. Public Records and Access

The Contractor shall provide full access to records related to performance and compliance to the MBTA pursuant to G.L. c. 11, s.12 for seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor cannot claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor’s own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under the Massachusetts Public Records Law.

9.21.6. Debarment

The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation.

9.21.7. Applicable Laws

The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable Massachusetts General Laws; Code of Massachusetts Regulations 801 CMR 21.00 (Procurement of Commodity and Service Procurements); M.G.L. c. 66A; and the Massachusetts Constitution Article XVIII if applicable.

9.21.8. Tax Law Compliance

The Contractor certifies under the pains and penalties of perjury tax compliance with Federal tax laws; state tax laws including but not limited to G.L. c. 62C, G.L. c. 62C, s. 49A; compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under G.L. c. 62E, withholding and remitting child support including G.L. c. 119A, s. 12; TIR 05-11; New Independent Contractor Provisions and applicable TIRs.

9.21.9. Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts

The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing at least 45 days prior to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is any risk to the solvency of the Contractor that may impact the Contractor’s ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

9.21.10. Protection of Commonwealth Data, Personal Data and Information

The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth/MBTA data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under M.G.L. c. 93H and c. 66A and other applicable state and federal privacy requirements. The Contractor shall comply with M.G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information. The Contractor shall also ensure that any personal data or information transmitted electronically or through a portable device is properly encrypted using (at a minimum) the Commonwealth’s “Cryptographic Management Standard” set forth in the Enterprise Information Security Policies and Standards published by the Executive Office for Technology, Services and Security (TSS), or a comparable Standard prescribed by the MBTA. Contractors with access to credit card or banking information of Commonwealth/MBTA customers certify that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards, and shall provide confirmation compliance during the Contract. The Contractor shall immediately notify the MBTA in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the MBTA and provide access to any information necessary for the MBTA to respond to the security breach and shall be fully responsible for any damages associated with the Contractor’s breach including but not limited to G.L. c. 214, s. 3B.

For all Contracts involving the Contractor’s access to personal information, as defined in G.L. c. 93H, and personal data, as defined in G.L. c. 66A, or access to MBTA or Commonwealth systems containing such information or data, Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read M.G.L. c. 93H and c. 66A and agrees to protect any and all personal information and personal data; and (2) has reviewed all of the Enterprise Information Security Policies and Standards published by the Executive Office for Technology Services and Security (TSS), or stricter standards prescribed by the MBTA. Notwithstanding any contractual provision to the contrary, in connection with the Contractor’s performance under this Contract, for all public authorities, executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with any pertinent security guidelines, standards, and policies; (2) comply with all Enterprise Information Security Policies and Standards published by the Executive Office for Security Services and Technology (TSS), or a comparable set of policies and standards (“Information Security Policy”) as prescribed by the MBTA; (3) communicate and enforce such security guidelines, standards, policies and the applicable Information Security Policy among all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which the Contractor is given access by the MBTA from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information or personal data (collectively referred to as the “unauthorized use”): (a) immediately notify the MBTA if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the MBTA to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the MBTA and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth and MBTA may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 9.15 of MBTA’s Terms and Conditions, withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under G.L. c. 214, § 3B for violations under M.G.L. c. 66A.

9.21.11. Corporate and Business Filings and Reports

The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the Secretary of and other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

9.21.12. Employer Requirements

Contractors that are employers certify compliance with applicable state and federal employment laws or regulations, including but not limited to G.L. c. 5, s. 1 (Prevailing Wages for Printing and Distribution of Public Documents); G.L. c. 7, s. 22 (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); minimum wages and prevailing wage programs and payments; unemployment insurance and contributions; workers’ compensation and insurance, child labor laws, AGO fair labor practices; G.L. c. 149 (Labor and Industries); G.L. c. 150A (Labor Relations); G.L. c. 151 and 455 CMR 2.00 (Minimum Fair Wages); G.L. c. 151A (Employment and Training); G. L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); G.L. c. 152 (Workers’ Compensation); G.L. c.153 (Liability for Injuries); 102 CMR 12.00 (Dependent Care Assistance Program); 29 USC c. 8 (Federal Fair Labor Standards); 29 USC c. 28 and the Federal Family and Medical Leave Act and M.G.L. c. 175M (Family and Medical Leave).

9.21.12.1. Federal and State Laws and Regulations Prohibiting Discrimination

Contractors certify compliance with applicable state and federal anti-discrimination laws including but not limited to the Federal Equal Employment Opportunity (EEO) Laws the Americans with Disabilities Act; 42 U.S.C Sec. 12,101, et seq., the Rehabilitation Act, 29 USC c. 16 s. 794; 29 USC c. 16. s. 701; 29 USC c. 14, 623; the 42 USC c. 45; (Federal Fair Housing Act); G. L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); the Public Accommodations Law G.L. c. 272, s. 92A; G.L. c. 272, s. 98 and 98A, Massachusetts Constitution Article CXIV and G.L. c. 93, s. 103; 47 USC c. 5, sc. II, Part II, s. 255 (Telecommunication Act; Chapter 149, Section 105D, G.L. c. 151C, G.L. c. 272, Section 92A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and Resources.

9.21.13. Right-to-Know Law

The Contractor shall certify that it will comply with the Massachusetts Right-To-Know Law, Chapter 470 of the Acts of 1983. Additionally, the Contractor agrees to submit a Safety Data Sheet (SDS) for each toxic or hazardous substance, or mixture containing such substance, pursuant to M.G.L. c. 111F §§ 8, 9, and 10, and the regulations contained in 454 CMR § 21.06 when deliveries are made.

The Contractor agrees to deliver all containers properly labeled pursuant to M.G.L. c. 111F § 7 and regulations contained in 454 CMR § 21.05. Failure to submit a SDS and/or label on each container will place the Contractor in noncompliance with the purchase order.

Copies of all SDSs shall be provided to the Technical Project Manager.

9.21.14. Other Damages

LIMITATION OF LIABILITY

Notwithstanding anything herein to the contrary, the Contractor's maximum aggregate liability for any loss or damages (other than patent infringement, death or personal injury) incurred by the MBTA as a result of or in consequence of the acts or omissions of the Contractor, its employees, subcontractors or agents in the performance of services covered by this Agreement shall not exceed one hundred percent (100%) of the Contract value plus any adjusted value per executed change order; provided, however, that if the Contractor's applicable insurance coverage is greater than this amount, the limit of liability for the Contract shall be the total insurance coverage.

IT IS AGREED AND UNDERSTOOD THAT THE MBTA SHALL BE ENTITLED TO RECOVER DIRECT DAMAGES INCLUDING "BENEFIT-OF-THE-BARGAIN" EXPECTATION DAMAGES AND DAMAGES FOR BREACH OF WARRANTY SUBJECT TO THE LIMITATION OF LIABILITY, AND THAT IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF REVENUES OR LOSS OR FAILURE TO REALIZE ANTICIPATED SAVINGS OR EFFICIENCIES ARISING IN CONNECTION WITH THIS AGREEMENT.

9.21.15. Northern Ireland Certification

Pursuant to G.L. c. 7 s. 22C for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in

an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

9.21.16. Pandemic, Disaster or Emergency Performance

In the event of a serious emergency, pandemic or disaster outside the control of the MBTA, the MBTA may negotiate emergency performance from the Contractor to address the immediate needs of the MBTA even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

9.22. Executive Orders

For covered Executive state Departments, the Contractor certifies compliance with applicable Executive Orders (see also Massachusetts Executive Orders), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

9.22.1. Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts

For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker.

9.22.2. Executive Order 130. Anti-Boycott

The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See IRC § 999(b)(3)-(4), and IRS Audit Guidelines Boycotts) or engages in conduct declared to be unlawful by G.L. c. 151E, s. 2. A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the MBTA shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

9.22.3. Conflict of Interest and Executive Order 346. Hiring of State Employees by State Contractors

Massachusetts Conflict of Interest Law, G.L. c. 268A, governs the conduct of all public officials and employees, including all dealings with potential contractors. It is the responsibility of Contractor to

ensure compliance with the Commonwealth’s Conflict of Interest Laws and avoid any conduct which might result in or give the appearance of creating for the Authority or its representatives in their relationship with the Contractor any conflicts of interest or favoritism and/or the appearance thereof or any conduct which might result failure to comply with G.L., c. 268A. Non-compliance with these Conflict of Interest terms shall constitute a material breach of this Contract.

For purposes of this solicitation, it is understood and agreed that no gift, loan or other thing has been or will be given to any employee, agent or officer of the MBTA by the Bidder, Bidder’s employees, subcontractors, or agents in connection with the award or performance of this Contract. It is further understood and agreed that no Board member, officer, or employee of the MBTA; no officer or employee of any independent authority or political subdivision of the Commonwealth of Massachusetts, no officer, employee, or elected official of the Commonwealth of Massachusetts, executive or legislative of any city, county, or town within the 175 cities and towns serviced by the MBTA; and no member or delegate to the Congress of the United States, during his/her tenure shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

If, during the performance of this Contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved which is not in compliance with these provisions, the Contractor shall promptly notify the Authority’s Contracting Officer in writing and fully disclose all circumstances thereof. The Authority reserves the right to grant an exception to the requirements of this Section, if so allowed by law, and notify the Contractor thereof. If the Authority does not grant an exception, the Contractor shall, within ten (10) days of written notice from the Authority, take all action necessary to comply with the terms stated herein.

The Bidder shall certify compliance with these terms and the Massachusetts Conflict of Interest Laws.

Additionally, Contractor certifies compliance with both the conflict of interest law G.L. c. 268A, s. 5 (f) and E.O. 346, which impose limitations regarding the hiring of state employees by private companies contracting with the MBTA. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

9.22.4. Executive Order 444. Disclosure of Family Relationships with Other State Employees

Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

9.22.5. Executive Orders 523, 526, and 565

Executive Order 523 (Establishing the Massachusetts Small Business Purchasing Program). Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes Executive Order 478). Executive Order 565 (Reaffirming and Expanding the Massachusetts Supplier Diversity Program). All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or

expression, religion, creed, ancestry, national origin, disability, veteran’s status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices. The Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices. The Contractor also commits to purchase supplies and services from certified minority, women, veteran, service-disabled veteran, LGBT or disability-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons; and Contractor commits to comply with any applicable Department contractual requirements pertaining to the employment of persons with disabilities pursuant to M.G.L. c. 7 s. 61(s). These provisions shall be enforced through the contracting Department, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

9.22.6. Laws and Regulations Prohibiting Discrimination and Human Trafficking

Contractors acknowledge and certify as a condition of this Contract that they are responsible for complying fully with all state and federal laws prohibiting discrimination, human trafficking, and forced labor, including but not limited to Chapter 178 of the Acts of 2011.

9.23. Supplemental Provisions

9.23.1. Applicability

Where applicable, these Supplemental Provisions shall apply to this RFP. In the event of a conflict or disparity between these Supplemental Provisions and Standard Terms & Conditions, the Supplemental Provisions govern.

9.23.2. Security Requirements

The Contractor shall certify that it will comply with the MBTA’s Security Requirements as stated herein. The selected Contractor shall:

1. Submit a complete list of Contractor’s employees, subcontractors, and agents that will perform work for the MBTA under this Contract. This list must be submitted prior to eligibility consideration for payment of delivery or completion of the first milestone. At a minimum, the list shall include:
 - a. Name and Employee Number/Identifier
 - b. Address
 - c. Job Title
 - d. Hours and Location of Work

Note: Immediate notification, in writing, is required for listed employees, subcontractors, and agents who leave Contractor’s (direct or indirect) employment and/or any new employees, subcontractors or agents who are to be added to this list. Contractor is required to provide, upon request by the MBTA, periodic updates of the list throughout the life of the Contract.

2. Conduct for all current and future employees performing work under this Contract, a legally available criminal background check, including a Criminal Offender Record Information (CORI) background check with the Massachusetts Criminal History Systems Board and a driver’s history check with the Massachusetts registry of Motor vehicles (if applicable). The

CORI check shall include a Level II Sex Offenders Registry check. To the extent not already available to the Contractor, the Contractor shall apply for and make best efforts to obtain CORI access. The Contractor shall provide written documentation to the Authority that demonstrates the Contractor’s compliance with the aforementioned requirements. Furthermore, the Contractor shall conduct these background and driver history checks at least once every two (2) years, or as otherwise specified by the MBTA. Any employee of the Contractor’s with a history that includes a felony conviction, any conviction for theft, or who appears otherwise unsuitable to perform the work that is the subject of this solicitation throughout the Term of this Agreement or any extensions thereof, shall not be assigned by the Contractor to perform work under this Agreement.

The MBTA reserves the right to have MBTA Transit Police perform the required background checks, and shall promptly notify the Contractor in writing of any such action.

3. Distribute an MBTA-issued photograph Contractor identification badge to all Contractor employees, subcontractors, and agents who work on MBTA property. The contractor shall provide a current (less than 1 year old) photograph to the MBTA, along with the required completed badge issuance paperwork prior to being issued the badges. The following information shall be listed on the back of the contractor identification badges: training certifications, safety training, and other related security training required by the MBTA. No employee, subcontractor or agent of the Contractor will be allowed on MBTA property without clearly displaying the MBTA-issued identification badge on their person.
4. Insure that Contractor’s employees, subcontractors, and agents:
 - a. Are not allowed on MBTA property except as required for stated work;
 - b. Are not allowed on MBTA property before and after service hours unless explicitly, contractually required to be there; and
 - c. Are forbidden from carrying firearms on MBTA property.
5. Provide to the MBTA, upon its request, any documents that pertain to:
 - a. Contractor employee, subcontractor or agent conduct on MBTA property;
 - b. Security training; and
 - c. Monitoring/auditing of Contractor employees or agents while on MBTA property.
6. If, at any time during the term of this Agreement, and also during any and all extensions thereof, the MBTA establishes new or revised security policies and procedures as they relate to the Contractor’s performance under this Agreement, the Contractor shall comply with such policies and procedures as deemed reasonable by the MBTA and the Contractor. |

9.23.3. Right-of-Way Safety Training Requirements

In the event the Contractor’s work is to be performed in proximity to railroad, bus ways, or subway tracks, the Contractor shall obtain appropriate Right of Way safety training from the MBTA before commencing work.

9.23.4. Workplace Environment

The Contractor and its employees shall comply with the MBTA Dignity in the Workplace and 8 Free Workplace requirements. The Contractor’s employees who violate either of these policies are to be removed from this Contract and are not to be employed on another MBTA contract. The Contractor also

agrees to include the following requirements in each subcontract entered into as part of this Agreement.

MBTA Dignity in the Workplace Policy. In accordance with governing statutes, regulations, and collective bargaining agreements, and consistent with its existing policies, the MBTA demands of itself and its employees that all work and work-related activities be conducted with complete respect for the dignity of all employees. In practice, this means that no action, inaction or language which would offend a reasonable employee or which any reasonable employee deems unwelcome will be tolerated. All personnel decisions will be based solely on objective consideration of relevant articulated factors. No personnel decision will directly or indirectly be based on consideration of an employee's age, race, sex, religion, creed, color, sexual orientation, national origin, disability/handicap, ancestry or Vietnam era veteran's status. These prohibitions on harassment and impermissible discrimination are absolute.

Drug and Alcohol Free Workplace Requirement. The Contractor, Contractor's employees, vendors, visitors, and volunteers are to be free of the effect of drugs, alcohol, controlled substances or other prohibitive substances when they are on MBTA property or performing MBTA business. In addition, all referenced parties are prohibited from using, possessing, selling or distributing any drugs, alcohol, controlled substances or other prohibited substances when they are on MBTA property or performing MBTA business. It is the responsibility of the Contractor to advise its employees of this requirement and to ensure that its employees meet this "fitness for duty" standard. Violators of this policy will not be allowed to remain on MBTA property or to continue conducting business for or with the MBTA. The Contractor will submit to the Authority within thirty (30) days of a Drug and Alcohol violation, a written report documenting the actions taken with regard to any of its employees who violate this policy. The Contractor will accept all liability arising from violation of this policy by his/her employees.

Anti-Drug and Alcohol Misuse Prevention Program: The services to be provided, either directly or indirectly, under contract for the MBTA to meet the criteria for drug and alcohol testing as mandated by the Federal Transit Administration (FTA).

Employees who perform safety-sensitive functions must be included in an employer substance abuse management program. The FTA has determined the safety-sensitive functions are performed by those who:

- Operate revenue service vehicles including when not in revenue service.
- Operate non-revenue service vehicles that require drivers to hold Commercial Drivers Licenses - CDLs.
- Dispatch or control revenue service vehicles.
- Maintain revenue service vehicles or equipment used in revenue service.
- Provide security and carry a firearm.

The definition of safety-sensitive includes supervisors who perform these functions. Supervisors of employees in the categories who do not themselves perform these functions are excluded.

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653, 654 and 40, and permit any authorized representatives of the United States Department of Transportation or its operating administrations, the Commonwealth of Massachusetts, or the MBTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653, 654 and 40 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 653, 654 and 40 before March 15 of each contractual year and to submit the Management Information System (MIS) reports before March 15 of each year of the contract to Director of Occupational Health Services and Workmen's Compensation, MBTA, 120 Boylston Street – 6th Floor, Boston, MA 02116. To certify compliance the contractor shall use the Substance Abuse Certifications in the Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements, which are published annually in the Federal Register.

Bidders must submit, with their bid/proposal, the Certificate of Compliance with Anti-Drug and Alcohol

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

Testing Programs.

Confidentiality: The information required to be submitted with proposal/bid shall be handled as confidential data and utilized on a “need to know” basis, to the extent permitted by law.

Labor Harmony: Prevailing Wage Rates Apply. The Contractor shall furnish labor that can work with all other elements of labor employed or to be employed at the MBTA. The Contractor agrees that all persons in its employment for the purpose of managing or working on the MBTA's premises shall conduct themselves at all times in an orderly and proper manner so as not to annoy or offend persons or MBTA employees using the premises. Moreover, the Contractor, at the request of the Authority will, for cause shown, remove from work on the Contract any employee who shall cause any annoyance or offense as aforesaid. The Contractor further covenants and agrees that, in the exercise of the rights and privileges granted, its employees or representatives will not deface or damage the property of the MBTA, deposit or scatter any rubbish, debris, waste, litter, or other matter in or about said premises. The Contractor agrees to assume liability for actions on the part of its employees.

9.24. Federal Requirements

9.24.1. Federal Transit Administration Required Clauses

Contractor shall ensure that all clauses applicable to its work, or service, performed for the MBTA pursuant to this contract are adhered to by the contractor and sub-contractors when applicable. In the event of a conflict between these FTA required clauses and other Terms and Conditions with respect to this contract, these clauses shall govern.

(FTA Required Clauses follow)

It is the responsibility of the proposer/ bidder to ensure that all clauses applicable to the work or services related to this contract are adhered to by the Contractor and its Sub-contractors when applicable.

Contract Clause	Applicability to Type of Contract
Fly America Requirements	When Transportation Paid by FTA Funds
Buy America Requirements	Value > 100K for Construction, Goods, Rolling Stock
Charter Bus Requirements	Operational Service
School Bus Requirements	Operational Service
Cargo Preference Requirements	Equipment/Material/Commodities Transported by Ocean
Seismic Safety Requirements	New Construction/Additions
Special Department of Labor (DOL) Equal Employment Clause	Value > \$10K for Construction
Energy Conservation Requirements	All
Clean Water Requirements	Value > \$100K
Bus Testing	Rolling Stock Acquisition
Pre-Award and Post Delivery Audit Requirements	Rolling Stock Acquisition

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

Contract Clause	Applicability to Type of Contract
Lobbying	All
Access to Records and Reports	All
Federal Changes	All
Bonding Requirements	Construction > \$100K
Clean Air	Value > \$100K
Recycled Products	Value > \$10K In Fiscal Year
Davis-Bacon and Copeland Anti-Kickback Acts	Construction > \$2000
Contract Work Hours and Safety Standards Act	Construction >\$2000, Rolling Stock, Operational >\$2,500
No Government Obligation to Third Parties	All
Program Fraud and False or Fraudulent statements and Related Acts	All
Termination	Value > \$10K
Government-Wide Debarment and Suspension (Non-procurement)	Value > \$25K
Privacy Act	All
Civil Rights Requirements	All
ADA Access Requirements	All
Breaches and Dispute Resolution	Value > \$100K
Patent and Rights in Data	Research Projects Only
Transit Employee Protective Agreements	Transit Operations
Disadvantaged Business Enterprise (DBE)	All
Incorporation of FTA Terms	All
Drug and Alcohol Testing	Operational Service/Safety Sensitive
Transit Vehicle Manufacturer (TVM) Certifications	Rolling Stock, All Vehicle Procurements
Metric Requirements	Sealed Bid Procurements, Rolling Stock, Construction
Conformance with National ITS Architecture	Contracts and Solicitations for ITS projects only
Corridor Preservation	Right of Way Development
Veterans Employment	Capital Projects

9.24.2. Federal Changes

The Contractor shall, at all times, comply with all applicable FTA regulations, policies, procedures and directions, without limitation those listed directly or by reference in the Master Agreement (Form FTA MA (26) dated October, 2019) between the Purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. The Contractor's failure to so comply shall constitute a material breach of contract.

9.24.3. Fly America Requirements

49 U.S.C. §40118 41 CFR Part 301-10.131 - 301-10.143

Applicability to Contracts: The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements: The Fly America requirements flow down from MBTA to first tier contractors, who are responsible for ensuring that lower tier contractors and sub-contractors are in compliance.

Fly America: The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10.131 - 301-10.143, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

9.24.4. Buy America Requirements

49 U.S.C. 5323(j)

49 U.S.C. 5323(h)

49 CFR Part 661

- A. The Bidder is to be governed by the latest provisions of the "Buy America" clause of the Surface Transportation Act of 1982, the Federal Mass Transportation Act of 1987 and Uniform Relocation Assistance Act of 1987 and execute the "Buy America" Certificate found in Attachment 3 to this Document. The separate requirements for rolling stock are set out in 5323(j)(2)(c) and 49 CFR part 661.11. The Bidder agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661 Section 165

Notwithstanding any other provisions of law, Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act or by any Act amended by the Act, or after the date of

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

enactment of this Acts, Title 23, United States Code, the Urban Mass Transportation Act of 1964, or the Surface Transportation Act of 1978 and 1982, and Federal Mass Transportation Act of 1987 and administered by the Department of Transportation, unless steel manufactured products used in such projects are produced in the United States.

B. The provisions of Subsection A of this Section shall not apply where the Secretary finds:

1. That their application would be inconsistent with the public interest.
2. That such material and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
3. In the case of procurement of bus and other rolling stock (including train control, communication, and traction power equipment) under the Urban Mass Transportation Act of 1964, and the Federal Mass Transportation Act of 1987, that:
 - a. The cost of components and subcomponents which are produced in the United States is more than 70 per centum (70%) of the cost of all components of the vehicle or equipment described in this paragraph.
 - b. Final assembly of the vehicle or equipment described in this paragraph has taken place in the United States.
 - c. For purposes of this Section, calculating components' cost, labor cost involved in final assembly shall not be included in this calculation.
 - d. The Secretary of Transportation shall not impose any limitation or condition on assistance provided under this Act, the Urban Mass Transportation Act of 1987 or Title 23, United States Code, which restricts any State from imposing more stringent requirements than this section, the use of articles, materials, and supplies mined, produced or manufactured in foreign countries in projects carried out with such assistance or restricts any recipient of such assistance from complying with such State imposed requirements.
 - e. Section 401 of the Surface Transportation Acts of 1978 is repealed.
4. That the inclusion of domestic material will increase the cost of the overall project contract by more than 25 per centum in case of all projects including but not limited to the acquisition of rolling stock.

Flow Down Requirements: The Buy America requirements flow down from MBTA to first tier Contractor, who are responsible for ensuring that lower tier contractors and sub-contractors are in compliance.

Buy America: The Contractor agrees to comply with 49 U.S.C. 5323(j) as amended by MAP-21, 49 U.S.C. 5323(h), 49 CFR Part 661, and FAST Act (Pub. L. 114-94) which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7 and was amended by Section 3011 of the FAST Act (Pub. L. 114-94). Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a sixty percent (60%) domestic content for FY16 & FY17; sixty-five percent (65%) domestic content for FY18 & FY19; and seventy percent (70%) domestic content for FY20 & beyond.

General waivers for small purchases do not apply to Contractor's equipment purchases when Contractor's contract value exceeds \$150,000 in value. Contractor must submit to MBTA the appropriate certification using a Buy America Certification Form with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier sub-contractors.

9.24.5. Cargo Preference Requirements

46 U.S.C. 55305

Applicability to Contracts: The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down Requirements: The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Cargo Preference: Use of United States-Flag Vessels - The contractor agrees:

1. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
2. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
3. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Cargoes Procured, Furnished, or Financed by the United States Government:

1. **Definition:** In this section, the term "privately-owned commercial vessel of the United States" does not include a vessel that, after September 21, 1961, was built or rebuilt outside the United States or documented under the laws of a foreign country, until the vessel has been documented under the laws of the United States for at least three (3) years.
2. **Minimum Tonnage:** When the United States Government procures, contracts for, or otherwise obtains for its own account, or furnishes to or for the account of a foreign country, organization, or persons without provision for reimbursement, any equipment, materials, or commodities, or provides financing in any way with Federal funds for the account of any persons unless otherwise exempted, within or without the United States, or advances funds or credits, or guarantees the convertibility of foreign currencies in connection with the furnishing or obtaining of the equipment, materials, or commodities, the appropriate agencies shall take steps necessary and practicable to ensure that at least fifty percent (50%) of the gross tonnage of the equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels is transported on privately-owned commercial vessels of the United States, to the extent those vessels are

available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas.

3. Waivers: The President, the Secretary of Defense, or Congress (by concurrent resolution or otherwise) may waive this section temporarily by:

- a. Declaring the existence of an emergency justifying a waiver; and
- b. Notifying the appropriate agencies of the waiver.

4. Programs of Other Agencies:

- a. Each department or agency that has responsibility for a program under this section shall administer that program with respect to this section under regulations and guidance issued by the Secretary of Transportation. The Secretary, after consulting with the department or agency or organization or person involved, shall have the sole responsibility for determining if a program is subject to the requirements of this section.
- b. The Secretary:
 - i. Shall conduct an annual review of the administration of programs determined pursuant to paragraph (1) as subject to the requirements of this section;
 - ii. May direct agencies to require the transportation on United States-flagged vessels of cargo shipments not otherwise subject to this section in equivalent amounts to cargo determined to have been shipped on foreign carriers in violation of this section;
 - iii. May impose on any person that violates this section, or a regulation prescribed under this section, a civil penalty of not more than \$25,000 for each violation willfully and knowingly committed, with each day of a continuing violation following the date of shipment to be a separate violation; and
 - iv. May take other measures as appropriate under the Federal Acquisition Regulations issued pursuant to section 25(c)(1) 1 of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1) 2 or contract with respect to each violation.

5. Security of Government-Impelled Cargo:

- a. In order to ensure the safety of vessels and crewmembers transporting equipment, materials, or commodities under this section, the Secretary of Transportation shall direct each department or agency (except the Department of Defense), when responsible for the carriage of such equipment, materials, or commodities, to provide armed personnel aboard vessels of the United States carrying such equipment, materials, or commodities if the vessels are transiting high-risk waters.

- b. The Secretary of Transportation shall direct each department or agency responsible to provide armed personnel under paragraph (1) to reimburse, subject to the availability of appropriations, the owners or operators of applicable vessels for the cost of providing armed personnel.
- c. In this subsection, the term “high-risk waters” means waters so designated by the Commandant of the Coast Guard in the Port Security Advisory in effect on the date on which an applicable voyage begins.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1642; Pub. L. 110–417, div. C, title XXXV, §3511(a), (b), Oct. 14, 2008, 122 Stat. 4769; Pub. L. 112–213, title V, §503, Dec. 20, 2012, 126 Stat. 1575.)

9.24.6. Seismic Safety Requirements

42 U.S.C. 7701 et seq.

49 CFR Part 41

Applicability to Contracts: The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down Requirements: The Seismic Safety requirements flow down from MBTA to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all sub-contractors.

Seismic Safety: The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a sub-contractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. The contractor will facilitate and follow Executive Order No. 12699, “Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction,” 42 U.S.C. 7704 note, except as the Federal Government determines otherwise in writing.

9.24.7. Special DOL Equal Employment Clause

41 CFR Part 60

See Section 9.24.23 – Civil Rights Requirements.

9.24.8. Energy Conservation Requirements

42 U.S.C. 6321 et seq. 49 CFR Part 622

Applicability to Contracts: The Energy Conservation requirements are applicable to all contracts.

Flow Down Requirements: The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and, sub-recipients and their sub-agreements at every tier.

Energy Conservation: The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act. The contractor agrees to perform an energy assessment for any

building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C.

9.24.9. Clean Water Requirements

33 U.S.C. 1251 - 1377

Applicability to Contracts: The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down Requirements: The Clean Water Act requirements flow down to MBTA third party contractors and their contracts at every tier, and sub-recipients and their sub-agreements at every tier.

Clean Water:

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. 1251 – 1377 et seq.
2. The contractor agrees to report each violation to MBTA and understands and agrees that MBTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office in compliance with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368
3. The contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f – 300j-6.

The contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

9.24.10. Pre-Award and Post-Delivery Audits Requirements

49 U.S.C. 5323

49 C.F.R. 661.12 49 CFR Part 663

Applicability to Contracts: These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Flow Down Requirements: These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

A Buy America certification under this part shall be issued in addition to any certification which may be required by part 661 of this title. Nothing in this part precludes FTA from conducting a Buy America investigation under part 661 of this title "Pre-Award and Post-Delivery Audit Requirements." The Contractor agrees to comply with "Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended," 49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

In accordance with the above, the Federal Transportation Administration; as delegated by the Secretary of Transportation, has issued regulations requiring pre-award and post-delivery audits when federal financial assistance is utilized in the purchase of rolling stock when funds have been made available under the Urban Mass Transportation Act as amended.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER "T" FERRIES

A. General

1. Definitions as used in this herein:
 - a. Pre-award means that period in the procurement process before the recipient enters into a formal contract with the supplier.
 - b. Post-delivery means the time period in the procurement process from when the rolling stock is delivered to the recipient until title to the rolling stock is transferred to the recipient or the rolling stock is put into revenue service, whichever is first.
 - c. Rolling stock means buses, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, and vehicles used for guideways and incline planes.
 - d. Audit means a review resulting in a report containing the necessary certifications of compliance with Buy America Standards, purchaser's requirements specifications, and, where appropriate, a manufacturer's certification of compliance with or inapplicability of the Federal Motor Vehicle Safety Standards, required by Section 319 of STURAA and this part.
2. Audit Limitations
 - a. Applicable Buy America requirements (Section 165 of the Surface Transportation Assistance Act of 1982, as amended); and
 - b. Solicitation specification requirements of the recipient.
 - c. An audit under this part includes, where appropriate, a copy of a manufacturer's self-certification information that the vehicle complies with Federal Motor Vehicle Safety Standard or a certification that such standards are inapplicable.
 - d. An audit conducted under this part is separate from the single annual audit requirement established by Office of Management and Budget Circular A-128, "Audits of State and Local Governments," dated May 16, 1985.

B. Pre-Award Audit

1. Pre-Award audit must be completed before a formal contract for the procurement of rolling stock may be issued.
2. The elements of this pre-award audit include the following certification to be maintained on file by the purchaser.
 - a. Buy America Certification
 - (i) There is a letter from the FTA which grants a waiver to the rolling stock to be purchased from the Buy America requirements under Section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982 as amended; or
 - (ii) The recipient is satisfied that the rolling stock to be purchased meets the requirements of Section 165(a) of (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or through an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists:

- (a) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
- (b) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

b. Purchaser's Requirements Certification

- (i) The rolling stock the recipient is contracting for the same product described in the purchaser's solicitation specification; and
- (ii) The Bidder is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's specification set forth in the recipient's solicitation.

C. Post-Delivery Audits

- 1. A post-delivery audit of FTA funded rolling stock procurement must be complete before title is transferred to the purchaser.
- 2. A post-delivery audit under this section includes:

- a. Post-delivery Buy America Certificate which the purchaser keeps on file, the following:
 - (i) There is a letter from UMTA (FTA) which grants a waiver to the rolling stock received from the Buy America requirements under Section 165(b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or
 - (ii) The recipient is satisfied that the rolling stock received meets the requirements of Section 165(a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists:
 - (a) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and
 - (b) The actual location of the final assembly point for rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.

b. Post-Delivery Purchaser's Requirements Certification

For purpose of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that:

- (i) Except for procurement covered under paragraph (c) in this Section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture or the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum,

shall:

- (a) Provide accurate records of all vehicle overhaul activities; and
 - (b) Address how the overhaul and operation of the vehicles fulfills the contract specifications.
 - (ii) After reviewing the report required under paragraph (a) of this Section, and visually inspecting and road testing the delivered vehicles, the vehicles meet contract specifications.
 - c. Post-Delivery Federal Motor Vehicle Safety Standards (if applicable)
3. If the purchaser cannot complete a post-delivery audit because it or its agent cannot certify Buy America compliance or that the rolling stock meets the purchaser's requirements specified in the contract, the rolling stock may be rejected and final acceptance by the recipient will not be required. The recipient may exercise any legal rights it has under the contract or at law.

Be advised that this provision does not preclude the recipient and manufacturer from agreeing to a conditional acceptance of rolling stock pending manufacturer's correction of deviations within a reasonable period of time.

NOTE: For this Section only, the following words have been used interchangeable to mean the same:

Recipient, Purchaser = Authority

Manufacturer, Bidder, Car builder = Contractor

9.24.11. Lobbying

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts: The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down Requirements: The Lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment 31 U.S.C. §1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to MBTA.

9.24.12. Access to Records and Reports

49 U.S.C. 5325

18 CFR 18.36(i)

49 CFR 633.17

Applicability to Contracts: Reference Chart “Requirements for Access to Records and Reports by Type of Contracts,” Item 6 of this Section.

Flow Down Requirements: FTA does not require the inclusion of these requirements in subcontracts.

Access to Records: The following access to records requirements apply to this Contract:

1. The Contractor agrees to provide MBTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where MBTA or a sub-grantee of MBTA in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) through other than competitive bidding, the Contractor shall make available records related to the contract to MBTA, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
3. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until MBTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).
5. FTA does not require the inclusion of these requirements in subcontracts.
6. **Requirements for Access to Records and Reports by Types of Contract**

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
Non-State <u>Grantees</u> a) Contracts below SAT (\$100,000)	Yes ¹	Those imposed on non-state	Yes	Yes	Yes	Yes
b) Contracts above \$100,000 / Capital Projects	Yes ¹	Grantee pass thru to Contractor	Yes	Yes	Yes	Yes

Sources of Authority: 1 18 CFR 18.36 (i)

9.24.13. Federal Changes

49 CFR Part 18

Applicability to Contracts: The Federal Changes requirement applies to all contracts.

Flow Down Requirements: The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Federal Changes: Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between MBTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

9.24.14. Clean Air

42 U.S.C. 7401 – 7601(q)

40 CFR 15.61

49 CFR Part 18

Applicability to Contracts: The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down Requirements: The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Clean Air:

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7601(q) et seq . The Contractor agrees to

report each violation to MBTA and understands and agrees that MBTA, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

9.24.15. Recycled Products

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

Applicability to Contracts: The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Contractor procures \$10,000 or more of one (1) of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

Flow Down Requirements: These requirements flow down to all contractor and sub-contractor tiers.

Recovered Materials: The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247.

9.24.16. Davis-Bacon and Copeland Anti-Kickbacks Acts

49 U.S.C. 5333

40 U.S.C. 3141 – 3144

40 U.S.C. 3146 – 3147

18 U.S.C. 874

40 U.S.C. 3145

Applicability to Contracts: The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

Flow Down Requirements: Applies to third party contractors and sub-contractors

1. Minimum Wages:

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the

Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than Monthly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one (1) classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its sub-contractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

- (A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (1) Except with respect to helpers as defined in 29 CFR 5.2(n) (4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (4) With respect to helpers as defined in 29 CFR 5.2(n) (4), such a classification prevails in the area in which the work is performed.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs ((1)(ii) (A), (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
2. **Withholding:** MBTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, MBTA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
3. **Payrolls and basic records.**
- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
 - (ii)
 - (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to MBTA for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402.

The prime contractor is responsible for the submission of copies of payrolls by all sub-contractors.

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or sub-contractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or sub-contractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or sub-contractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or sub-contractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees -

- (i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in

percentages of the journeyman's hourly rate) specified in the Contractor's or Sub-contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) **Equal Employment Opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. **Subcontracts.** The contractor or sub-contractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any sub-contractor or lower tier sub-contractor with all the contract clauses in 29 CFR 5.5.
7. **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a sub-contractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its sub-contractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of eligibility.**
 - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or Contractor who has an interest in the contractor's Contractor is a person or Contractor ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this contract shall be subcontracted to any person or Contractor ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. **Overtime requirements.** No contractor or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and sub-contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or sub-contractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

4. **Subcontracts.** The contractor or sub-contractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or sub-contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or sub-contractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or sub-contractor will permit such representatives to interview employees during working hours on the job.

The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

OMB Control Number

(a)(1)(ii)(B) 1215-0140

(a)(1)(ii)(C) 1215-0140

(a)(1)(iv) 1215-0140

(a)(3)(i) 1215-0140, 1215-0017

(a)(3)(ii)(A) 1215-0149

(c) 1215-0140,

1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

Effective Date Note: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

9.24.17. Contract Work Hours and Safety Standards Act

29 CFR Part 5

40 U.S.C. 3701 et seq.

40 U.S.C. 3702

Applicability to Contracts: The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b) (1) (B) (iii) and (b) (2), 29 CFR 5.2(h), 49 CFR 18.36(i) (6).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work” with a value greater than \$100,000.

Flow Down Requirements: Applies to third party contractors and sub-contractors.

- a. Overtime Requirements:** No contractor or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- b. Violation; Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and sub-contractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- c. Withholding for Unpaid Wages and Liquidated Damages:** MBTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or sub-contractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

Subcontracts: The Contractor or sub-contractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs (1) through (4) of this section.

9.24.18. No Government Obligation to Third Parties

Applicability to Contracts: Applicable to all contracts.

Flow Down Requirements: This concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

No Obligation by the Federal Government.

1. MBTA and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to MBTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub-contractor who will be subject to its provisions.

9.24.19. Program Fraud and False or Fraudulent Statements and Related Acts

31 U.S.C. 3801 et seq.

49 CFR Part 31

18 U.S.C. 1001

49 U.S.C. 5307

Applicability to Contracts: These requirements are applicable to all contracts.

Flow Down Requirements: These requirements flow down to contractors and sub-contractors who make, present, or submit covered claims and statements.

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two (2) clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the sub-contractor who will be subject to the provisions.

9.24.20. Termination & Cancellation

49 CFR Part 18

FTA Circular 4220.1F

For termination, see Section 9.9.

9.24.21. Government-Wide Debarment and Suspension (Non-Procurement)

49 CFR 18

2 CFR 1200

2 CFR 180

Executive Orders 12549 and 12689

31 U.S.C. 6101

Background and Applicability: In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, sub-contractor, supplier, Contractor, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180). This government-wide regulation implements Executive Order 12549, Debarment and Suspension, Executive Order 12689, Debarment and Suspension, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

These provisions apply to all MBTA contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for federally required auditing services. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and sub-contractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the System for Award Management (SAM), (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract.

Grantees, contractors, and sub-contractors who enter into covered transactions also must require the entities they contract with to comply 2 CFR 180 and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Flow Down Requirements: These requirements flow down to contractors and sub-contractors at all levels.

Suspension and Debarment: This contract is a covered transaction for purposes of 49 CFR Part 18. As such, the contractor is required to verify that none of the contractor, its principals, are excluded or disqualified as defined under Executive Orders Nos. 12549 and 12689.

The contractor is required to comply with 2 CFR 1200, and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its Proposal, the Bidder certifies as follows:

The certification in this clause is a material representation of fact relied upon by MBTA. If it is later determined that the Firm knowingly rendered an erroneous certification, in addition to remedies available to MBTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Firm agrees to comply with the requirements 2 CFR 180 while this

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

offer is valid and throughout the period of any contract that may arise from this offer. The Firm further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The Contractor shall meet the requirements of 49 C.F.R. Part 29. 49 C.F.R. Part 29 implements Executive Order 12549, Debarment and Suspension, Executive Order 12689, Debarment and Suspension, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327). The provisions of Part 29 apply to all contracts and subcontracts at any level expected to equal or exceed \$24,000. This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$24,000. As such, the Contractor is required to verify that none of the Contractor (i.e., entity), its principals, as defined at 49 C.F.R. 29.995, or affiliates, as defined at 49 CFR 29.905, or subcontractors with which it proposes to contract or subcontract, are excluded or disqualified as defined at 49 C.F.R. 29.940 and 29.945. Contractors can do this by (a) checking the Excluded Parties List System in the System for Award Management System (SAM), (b) collecting a certification, or (c) adding a clause or condition to the relevant contract or subcontract.

9.24.22. Privacy Act

5 U.S.C. 552

Applicability to Contracts: When MBTA maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down Requirements: The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Contracts Involving Federal Privacy Act Requirements: The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

9.24.23. Civil Rights Requirements

29 U.S.C. § 623, 42 U.S.C. § 2000 42 U.S.C. § 6102, 42 U.S.C. § 12112 42 U.S.C. § 12132, 49 U.S.C. § 5332 29 CFR Part 1630, 41 CFR Parts 60 et seq.

The MBTA is an Equal Opportunity Employer. As such, the MBTA agrees to comply with all applicable civil rights statutes and implementing regulations issued by the FTA. Apart from inconsistent requirements imposed by Federal statutes or regulations, the MBTA agrees to comply with the

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

requirements of 49 U.S.C. § 5323(h) (2) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

1. The Contractor will be required to comply with these applicable civil rights, nondiscrimination, and equal employment opportunity laws and regulations:
 - a. 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 26, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, et seq., 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6101 – 6107, 42 U.S.C. § 12101, et seq., 42 U.S.C. § 12132, 49 U.S.C. § 5307 (c)(1)(D)(ii), 49 U.S.C. § 5332,
 - b. 29 CFR Part 1630, 41 CFR Part 60, 29 U.S.C. § 623, 42 U.S.C. § 2000e, 42 U.S.C. § 12112,
 - c. 49 U.S.C. § 5325 (k).
 - d. Fixing America’s Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended.
2. The Civil Rights requirements flow down to all third party sub-contractors and their subcontracts at every tier.
3. The following requirements apply to a contract awarded as a result of this solicitation:
 - a. **Nondiscrimination** - In accordance with U.S. Department of Transportation (DOT), Federal, the Rehabilitation Act of 1973, as amended, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6102, 42 U.S.C. § 6101 – 6107, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 42 U.S.C. § 12132, Federal transit law 49 U.S.C. § 5307 (c)(1)(D)(ii), Federal transit law 49 U.S.C. § 5332, FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.”, DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order No. 13166 and DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (70 FR 74087, Dec. 14, 2005), the Unruh Civil Rights Act, the Contractor agrees that it will comply with the identified Federal laws and regulations, pertaining to MBTA programs and activities, to ensure that no person will be denied the benefits of, or otherwise be subjected to, discrimination (particularly in the level and quality of transportation services and transportation-related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations, other implementing requirements that DOT or FTA may issue, and any other applicable Federal statutes and/or regulations that may be signed into law or promulgated.
 - b. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to a contract awarded as a result of this solicitation:
 - i. **Race, Color, Ancestry, Marital Status, Medical Condition, Genetic Information, Religion, National Origin, Sex, Sexual Orientation, Gender Identity, Gender**

Expression - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 49 U.S.C. § 5332, FTA Circular 4704.1, “Equal Employment Program Guidelines for Grant Recipients”, and , the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, including "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60, et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), Fair Employment and Housing Act, and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, ancestry, religion, marital status, medical condition, genetic information, national origin, sex, sexual orientation, gender identity, gender expression, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue, and any other applicable Federal statutes that may be signed into law or Federal regulations that may be promulgated.

- ii. **Sex** – The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1975, as amended, 20 U.S.C. § 1681, and 49 CFR part 25. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
 - iii. **Age** - The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, 45 CFR part 90, the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, and Equal Employment Opportunity Commission (EEOC) implementing regulations 29 CFR part 1625. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
 - iv. **Disabilities** - The Contractor agrees to comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(d), 36 CFR part 1194, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, 49 CFR parts 27, 37, 38, and 39, and FTA Circular 4710.1, “Americans with Disabilities Act: Guidance”. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
4. The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

9.24.24. ADA Access Requirements

49 U.S.C. § 5301, 29 U.S.C. § 794, 42 U.S.C. § 12101

Applicability to Contracts: The Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Contractor shall also comply with the following regulations, as applicable, and any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
2. U.S. DOT regulations, "nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
3. U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
4. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
5. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
6. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
7. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
8. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
9. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

9.24.25. Breaches and Dispute Resolution

49 CFR Part 18 FTA Circular 4220.1F

Applicability to Contracts: All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down Requirements: The Breaches and Dispute Resolutions requirements flow down to all tiers.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of MBTA. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the MBTA. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of MBTA shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by MBTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the MBTA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the MBTA is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by MBTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

9.24.26. Patent and Rights in Data

37 CFR Part 401 49

CFR Parts 18 and 19

Applicability to Contracts: Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow Down Requirements: The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK

(A) **Rights in Data** - The following requirements apply to each contract involving experimental, developmental or research work:

1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - a. Except for its own internal use, MBTA or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may MBTA or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for “Federal Government purposes,” any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, “for Federal Government purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 2. Any rights of copyright purchased by MBTA or Contractor using Federal assistance in whole or in part provided by FTA.
 - c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA’s general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, MBTA and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for MBTA or Contractor’s use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
 - d. Unless prohibited by state law, upon request by the Federal Government, MBTA and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by MBTA or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither MBTA nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - f. Data developed by MBTA or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work

required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that MBTA or Contractor identifies that data in writing at the time of delivery of the contract work.

3. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
 4. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), MBTA and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- (B) **Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:
1. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, MBTA and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
 2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), MBTA and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors Under" Government Grants, Contracts and Cooperative Agreements,; 37 C.F.R. Part 401.
 3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

9.24.27. Transit Employee Protective Agreements

49 U.S.C. § 5310, § 5311, and § 5333 29 CFR Part 215

Applicability to Contracts: The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down Requirements: These provisions are applicable to all contracts and subcontracts at every tier.

- a. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments

thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to MBTA's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

- b. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- c. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

9.24.28. Incorporation of Federal Transit Administration (FTA) Terms

FTA Circular 4220.1F

Applicability to Contracts: The incorporation of FTA terms applies to all contracts and subcontracts at every tier.

Flow Down Requirements: The incorporation of FTA terms has unlimited flow down.

Incorporation of Federal Transit Administration (FTA) Terms: The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the most current FTA Circular 4220, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MBTA requests which would cause MBTA to be in violation of the FTA terms and conditions.

9.24.29. Drug and Alcohol Testing

49 U.S.C. §5331

49 CFR Part 655

49 CFR Part 382

Applicability to Contracts: The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements: Anyone who performs a safety-sensitive function for the recipient or sub-recipient is required to comply with 49 CFR 655 as amended by MAP-21, with certain exceptions for contracts involving maintenance services. Maintenance CONSULTANTS for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance sub-contractors.

Drug and Alcohol Testing: The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, or MBTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The contractor agrees further to certify annually its compliance with Part 655 before June 30 and to submit the Management Information System (MIS) reports before January 15 to MBTA. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

9.24.30. Transit Vehicle Manufacturer (TVM) Certifications

49 CFR Part 26

49 CFR §26.49 Contractor must submit to MBTA a certification from each transit vehicle manufacture that desires to bid or propose upon a DOT-assisted transit vehicle procurement that it has complied with the requirements of 49 CFR §26.49. MBTA may, however, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the overall goal-setting procedures.

9.24.31. Metric Requirements

15 U.S.C. §§205

2007-Pub. L. 110–69

As required by U.S. DOT or FTA, MBTA agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a et seq.; Executive Order No. 12770, “Metric Usage in Federal Government Programs,” 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the MBTA agrees to accept products and services with dimensions expressed in the metric system of measurement.

9.24.32. National Intelligent Transportation Systems (ITS) Architecture and Standards

23 U.S.C. Section 517(d)

23 U.S.C. §502

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

9.24.33. Corridor Preservation

49 U.S.C. 5323(q)

The Recipient agrees not to develop right-of way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, in anticipation of its Project until all required environmental reviews for that Project have been completed.

9.24.34. Veterans Employment

49 U.S.C. 5325 (k)

Veterans Employment. As provided by 49 U.S.C. § 5325(k):

To the extent practicable, Contractor agrees that it:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

Contractor also assures that its sub-contractor:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

9.24.35. Air Quality / EPA and Fuel Economy

Applicable requirements of EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93.

The Contractor should be aware that the following EPA regulations, among others, may apply to its Project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 6.00.

9.24.36. Federal Tax Liability and Recent Felony Convictions

Consolidated Appropriations Act 2019, Pub. L. 116-6, div. D, Title VII, Sections 744-745

Applicability to Contracts:

The requirements apply to any Third-Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association (“Third-Party Participant”).

The Third-Party Participant must provide a certification that the Third-Party Participant:

1. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
2. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

MBTA shall not enter into any agreement with a Third-Party Participant unable to provide such certification without written FTA approval.

Flow Down Requirements: The requirements flow down from MBTA to first tier contractors, who are responsible for ensuring that all lower tier contractors and sub-contractors are in compliance, without regard to the value of any subagreement.

9.24.37. Compliance with the National Defense Authorization Act

Public Law 115-232

Applicability to Contracts:

On all contracts, the “Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment” Regulation (2 CFR 200.216) prohibits the Contractor from using or furnishing the following telecommunications equipment or services:

1. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
2. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
3. Telecommunications or video surveillance services provided by such entities or using such equipment.

4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

This prohibition applies to all products manufactured by the aforementioned companies, including any individual components or parts.

By submitting a bid, the Contractor certifies that all services, equipment and work will be in compliance with the terms of 2 CFR 200.216. The Contractor shall submit a Certificate of Compliance (“COC”) indicating compliance with the above provisions for all telecommunications equipment or services included in the Contract. Payment for the item(s) or services in which the materials are incorporated may be withheld until these COCs are received. Any cost involved in furnishing the certificate(s) shall be borne by the Contractor.

9.25. Federal Requirements – Disadvantaged Business Enterprises

9.25.1. Policy Statement

The Massachusetts Bay Transportation Authority, hereinafter referred to as “the Authority” or “the MBTA,” has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Authority has received Federal financial assistance from the USDOT, and as a condition of receiving this assistance, the Authority has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Authority to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in contracts funded wholly or in part by USDOT funds. Further, in keeping with the spirit of growth and development, raising the bar to fulfill business needs and ensuring quality, the Authority will also provide networking opportunities, technical support, guidance and training to DBEs and contractors to support quality business partnerships.

It is the policy of the Authority to do the following:

1. Ensure non-discrimination in the award and administration of USDOT-assisted contracts.
2. Create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts.
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law.
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate in the DBE Program.
5. Help remove barriers to the participation of DBEs in USDOT-assisted contracts.
6. Assist the development of firms that can compete successfully in the market place outside the DBE Program.

In administering the DBE Program, the Authority will not do the following:

1. Exclude any person from participation in the award and performance of any contract on the basis of age, race, color, religion, sexual orientation, disability or national origin.
2. Directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of 49 CFR Part 26.

3. Use race- or gender-conscious participation set-asides on any USDOT-assisted contracts; but, race- or gender- neutral set-asides can be used as part of the MBTA Fostering Small Business Program.

Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the Authority in its financial assistance agreements with USDOT. The Assistant Secretary of the Office of Diversity and Civil Rights has been designated as the DBE Liaison Officer (DBELO), and has unimpeded and direct access to the General Manager. In that capacity, the Assistant Secretary is responsible for implementing all aspects of the DBE Program. The DBELO shall act in an administrative capacity in implementing the DBE Program throughout the Authority.

9.25.2. Definitions

Terms and definitions applicable to the USDOT DBE Program and these Provisions may be found at 49 CFR § 26.5 and related appendices and guidance pages.

9.25.3. Contractor Assurances

The contractor, subrecipient or any subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of the contractor or such other remedy as the Authority deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and / or
4. Disqualifying the contractor from future Bidding as non-responsible.

9.25.4. Required Subcontract Provisions

The contractor shall include the provisions of Section 9.25.3 - Contractor Assurances above in every subcontract, making those provisions binding on each subcontractor. The contract also shall include a copy of these Provisions, in their entirety, in every subcontract with a DBE firm which is, or may be, submitted for credit toward the contract's DBE participation goal. All subcontracts or agreements with DBEs to supply labor or materials, including but not limited to lower tier subcontracts, must be performed in accordance with these Provisions and 49 CFR Part 26.

DBE Participation

- (b) **Affirmative Action Obligation.** Contractor shall take affirmative action to seek out and consider DBEs as subcontractors and / or suppliers of materials and services for this contract to achieve the stated DBE Participation Goal.
- (c) **DBE Participation Goal.** The Authority has established the following goal(s) for participation on this contract by DBEs. The applicable goal remains in effect throughout the life of the contract regardless of whether pre-identified DBE subcontractors remain on the Project or under contract:

The DBE Participation Goal for this procurement is 8%.

- (d) **Eligibility of DBEs.** Only firms that have been certified by the Massachusetts Unified Certification Program (“MassUCP”) and confirmed by the Authority as eligible in

accordance with 49 CFR Part 26 to participate as DBEs on federally aided Authority contracts may be used on this contract for credit toward the DBE participation goal.

- (e) **Massachusetts DBE Directory.** The Authority makes available to all Bidders / proposers the most current Massachusetts Disadvantaged Business Enterprise (DBE) Directory. This directory is made available for contractors’ convenience and is informational only. The Directory lists those firms that have been certified as eligible in accordance with the criteria of 49 CFR Part 26 to participate as DBEs on federally aided Authority contracts. The Directory also lists the kinds of work each firm is certified to perform, but does not constitute an endorsement of the quality of performance of any business, and does not represent the Authority’s subcontractor approval.

Contractors are encouraged to make use of the DBE Directory maintained by Massachusetts Supplier Diversity Office (“SDO”) on the Internet. This listing is updated daily and may be accessed at the SDO website at: <https://www.sdo.osd.state.ma.us/BusinessDirectory/BusinessDirectory.aspx>

- (f) **DBE Certification.** In order to be counted on a USDOT-assisted contract, a DBE must be certified in accordance with 49 CFR 26, Subparts C and D (Sections 26.51-26.55 and 26.61-26.73). A firm must apply to MassUCP for DBE certification to participate on federally aided Authority contracts. An applicant for DBE certification must identify the area(s) of work it seeks to perform on USDOT-assisted projects.
- (g) **DBE Joint Venture Approval.** To obtain recognition as an approved DBE joint venture, the parties to the joint venture must provide to the Authority’s Capital Delivery Prequalification Committee - at least ten (10) business days before the Bid / proposal opening date – a DBE / Non-DBE Joint Venture Affidavit in the form attached hereto, (see Attachment #4) **Joint Venture Affidavit**, and including, but not limited to the following:
- A copy of the joint venture agreement;
 - A description of the distinct, clearly defined portion of the contract work that the DBE will perform with its own forces; and,
 - All such additional information as may be requested by the Authority for the purpose of determining whether the DBE joint venture is eligible.

The DBE joint venture must be approved by both the Authority’s Office of Diversity and Civil Rights and the Authority’s Capital Delivery Prequalification Committee.

- (h) **Counting DBE Participation Towards DBE Participation Goals.** In order for DBE participation to count toward the DBE participation goal, the DBE(s) must have served a commercially useful function in the performance of the contract and must have been paid in full for acceptable performance. The Authority will count DBE participation toward overall and contract goals as provided in 49 C.F.R. § 26.55.

Requirements and Procedures before Contract Award

- (i) **Bidders List.** Pursuant to 49 CFR § 26.11(c), the Authority must collect certain information from all Bidders / proposers to create a Bidders list. The Authority will survey each individual firm for this information directly. Failure to comply with a written request for this information within fifteen (15) business days may result in the suspension of Bidding privileges or other such sanctions, as provided for in these Provisions, until the information is received.
- (j) **Pre-Bid / Proposal Conference.** At the pre-bid / proposal conference which may be held with respect to this contract, the Authority shall be available to review with prospective

Bidders / proposers the steps they must take to comply with these Provisions and to assist prospective Bidders / proposers with respect thereto. No action or failure to act of the Authority at the pre-bid / proposal conference shall in any way limit or otherwise affect the terms of these Provisions, or any portion thereof; however, Bidders / proposers shall be deemed to have notice of information made available with respect to these Provisions at the pre-bid / proposal conference. The Authority will be available to the prospective Bidders / proposers for review of and assistance with the procedures for compliance with these Provisions for contracts that do not require a pre-bid / proposal conference.

(k) Bid / Proposal Submission

1. Each Bidder / proposer, as part of its Bid / proposal submission, shall submit the following:
 - a. A completed form **(see Attachment #4): Schedule of Participation by Disadvantaged Business Enterprises**, listing those DBEs with which the Bidder / proposer intends to contract.
 - i. The Bidder / proposer shall list only firms which have the capacity to perform, manage and supervise the work proposed in accordance with the requirements of 49 CFR Part 26.
 - ii. The listing of a DBE by a Bidder / proposer on its Schedule shall constitute a representation by the Bidder / proposer that, if it is awarded the contract, it will enter into a subcontract with such DBE for the scope of the work and at a price that is not less than that set forth in its Bid / proposal submission, subject to the terms of these Provisions and the contract.
 - b. A completed and signed original **(see Attachment #5): DBE Letter of Intent** for each DBE listed in the Schedule, identifying the work the DBE will perform by NAICS Code and by specific description.
 - c. The most recent certification letter from MassUCP for each DBE listed in the Schedule of Participation by Disadvantaged Business Enterprises.
2. If the Authority determines at the time of Bid / proposal opening that the low Bidder / proposer has failed to include in its Bid / proposal package all of the required information, the Bidder / proposer will have the lesser of three (3) business days or five (5) calendar days from the date of notification of this failure to present the missing certification letter to the Authority.
3. In the event the scope of work listed on the Schedule is not sufficient to fulfill the stated goal, the Bidder / proposer shall submit a statement of good faith efforts of the reasons why it believes it is in compliance with these Provisions.
 - a. A statement of good faith efforts must include the types and extent of documentation identified in Appendix A to 49 CFR Part 26.
 - b. When a non-DBE subcontractor was selected over a DBE for work on the contract, the Bidder / proposer must provide copies of each DBE and non-DBE subcontractor quote submitted to the Bidder / proposer.

(l) Evaluation of Good Faith Efforts

- a. The apparent prevailing Bidder / proposer's attainment of the DBE participation goal or a satisfactory demonstration of good faith efforts is a prerequisite for award of the contract. The Authority may reject as non-responsive any Bid / proposal which it determines fails to comply with these Provisions.
- b. The Authority may request additional information from Bidders / proposers concerning their good faith efforts. All information requested by the Authority for the purpose of evaluating a Bidder / proposer's efforts to achieve the DBE participation goal must be provided within three (3) calendar days.

- c. Actions which constitute evidence of good faith efforts to meet a DBE participation goal are outlined in 49 CFR Part 26, Appendix A.
 - d. In a negotiated procurement, including a design-build procurement, good faith efforts will be determined consistent with the provisions of 49 CFR § 26.53(b)(3)(ii).
 - e. If the Authority finds that the Bidder / proposer has not demonstrated good faith efforts to comply with these requirements, it shall propose that the Bidder / proposer be declared ineligible for award. In that case, the Bidder / proposer may request administrative reconsideration in accordance with 49 CFR § 26.53(d). Such requests must be sent in writing within five (5) calendar days of receiving notice of proposed ineligibility to: The Office of the General Counsel, Massachusetts Department of Transportation, 10 Park Plaza, Boston, MA, 02116.
 - f. If, after administrative reconsideration, the Authority finds that the Bidder / proposer has not shown that sufficient good faith efforts were made to comply with the requirements of these Provisions, it shall reject the Bidder / proposer’s proposal and may retain the proposal guaranty.
- (m) **Failure of Bidder / Proposer to Participate.** Failure of any Bidder / proposer to participate in any proceeding applicable with respect to its Bid, after written request by the Authority may result in a determination that its Bid / proposal is non-responsive.
- (n) **Amendment of Schedule of Participation by Disadvantaged Business Enterprises.** A Bidder / proposer may amend its Schedule of Participation by Disadvantaged Business Enterprises only when authorized to do so by the Authority and only in accordance with the requirements of 49 CFR Part 26 and Section 1.1.21 of these Provisions.

Requirements and Procedures after Contract Award

- (o) **General Provisions for Proposal and Approval of Subcontractors**
- 1. The Authority retains the right to approve or disapprove of any or all subcontractors.
 - 2. If, pursuant to the subcontractor approval process, the Authority finds that a DBE subcontractor does not have sufficient experience or resources to perform, manage and supervise work of the kind proposed in accordance with the requirements of 49 CFR Part 26, approval of the DBE subcontractor may be denied. In the event of such denial, the contractor shall proceed in accordance with the requirements of this section and 49 CFR Part 26.
 - 3. After selection of the contractor and award of the contract, and before issuance of the Notice to Proceed, the contractor must provide a copy of an executed agreement for all DBE and non-DBE subcontractors to Contract Administration and the Government Compliance Unit in the Office of Diversity and Civil Rights.
- (p) **Compliance with Schedule of Participation by Disadvantaged Business Enterprises**
- The contractor shall utilize the specific DBEs listed in its approved Schedule of Participation of Disadvantaged Business Enterprises to perform the work and supply the materials for which each is listed unless the contractor obtains the written consent of the Authority’s Office of Diversity and Civil Rights (“ODCR”) as provided in these Provisions. Unless such consent is provided under these Provisions, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.
 - The contractor’s compliance with the DBE participation goal shall be determined by reference to the established percentage of the total contract price; provided, however,

that no decrease in the dollar amount of a contractor’s commitment to any DBE shall be allowed without the approval of ODCR.

- If the contract price is increased or the scope of work is changed, the contractor may be required to submit a revised Schedule of Participation of Disadvantaged Business Enterprises in accordance with these Provisions.
- In the event of the decertification of a DBE scheduled to participate on the contract for credit toward the DBE participation goal, the provisions of 49 CFR § 26.87 shall apply.
- The contractor shall notify the Authority immediately of any facts that come to its attention indicating that it may or will be unable to comply with any aspect of its DBE obligation under this contract.
- Any notice required by these Provisions shall be given in writing to: (1) the Resident Engineer; (2) designated Compliance Officer; and (3) the Assistant Director of Government Compliance, MBTA Office of Diversity and Civil Rights, 10 Park Plaza, Suite 3800, 3rd Floor, East Wing, Boston, MA, 02116.

(q) **Request for Revised Schedule of Participation of Disadvantaged Business Enterprises.** If, for reasons beyond its control, the contractor cannot comply with its DBE participation commitment in accordance with the Schedule of Participation of Disadvantaged Business Enterprises, the contractor shall submit to the Authority the reasons for its inability to comply with its obligations and shall submit, and request approval for, a revised Schedule of Participation of Disadvantaged Business Enterprises. If approved by ODCR, the revised Schedule shall govern the contractor's performance in meeting its obligations under these Provisions.

(r) **Termination of DBE by Contractor for Cause**

1. A contractor shall not terminate a DBE subcontractor or an approved substitute DBE firm without the prior written consent of ODCR. This includes, but is not limited to, instances in which a contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.
2. ODCR may provide such written consent only if it finds, for reasons stated in its concurrence document, that the contractor has good cause to terminate the DBE firm. A contractor may not terminate a DBE subcontractor for convenience.
3. For purposes of this paragraph, good cause includes the circumstances identified in 49 CFR § 26.53.
4. Before transmitting to ODCR a request to terminate and / or substitute a DBE subcontractor, the contractor must give notice in writing to the DBE subcontractor, with a copy to ODCR of its intent to request to terminate and / or substitute, and the reason for the request.
5. The contractor must give the DBE five (5) business days to respond to the contractor’s notice. The DBE must advise the Authority and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Authority should not approve the contractor’s action. If required in a particular case as a matter of public necessity (e.g., safety), the Authority may provide a response period shorter than five (5) business days.
6. In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms.

(s) **Substitution of DBEs.** When a DBE subcontractor is terminated as provided in this section, or fails to complete its work on the contract for any reason, the contractor must

make good faith efforts, as outlined in Appendix A to 49 CFR § 26, to find another DBE Subcontractor to substitute for the original DBE as detailed in 49 CFR §53.

- (t) **Prompt Payment and Release of Retainage.** The contractor must promptly pay each subcontractor under this contract for satisfactory performance of its contract within ten (10) business days from the receipt of each payment the contractor receives from the Authority. The contractor further agrees to make payment in full, including retainage, to each Subcontractor no later than ten (10) business days after the Subcontractor has satisfactorily completed all of the work required under its subcontract. Failure to comply with this requirement may result in the withholding of payment to the Prime contractor until such time as all payments due under these Provisions have been received by the subcontractor(s) and / or referral to the Prequalification Committee for action, which may affect the contractor’s prequalification status.

(u) **Joint Checks Policy**

The Authority recognizes that the use of Joint Checks may be a business practice required by material suppliers and vendors in the construction industry. A Joint Check is a two-party check issued by the contractor to a DBE subcontractor and a third party such as a Regular Dealer of material or supplies. The contractor issues the check as payer to the DBE and the third party jointly as payees to guarantee payment to the third party for materials or supplies obtained or to be used by the DBE. FTA has established criteria to ensure that DBEs are in fact performing a commercially useful function while using a Joint Check arrangement. Contractors and DBEs must meet and conform to these conditions and criteria governing the use of Joint Checks.

In the event that a contractor or DBE subcontractor desires to use a Joint Check, the Authority will require prior notice and will closely monitor the arrangement for compliance with FTA regulations and guidance. The Authority may allow a Joint Check arrangement and give credit to a contractor for use of the DBE where one or more of the following conditions exist:

- a. The use of a Joint Check is in fact required by this type of vendor or supplier as a standard industry practice that applies to all contractors and subcontractors (DBEs and non-DBEs); or is required by a specific vendor or supplier;
- b. Payment for supplies or materials would be delayed for an unreasonably extended period without the Joint Check arrangement;
- c. The DBE (or any of its sub-subcontractors) has a pattern or history of not paying a vendor or supplier within a reasonable time or has not established enough of a credit history with the supplier or vendor; and / or
- d. The presence of severe adverse economic conditions, where credit resources may be limited and such practices may be necessary or required to effect timely payments.

The Authority also may consider other factors, including without limitation:

- e. Whether there is a requirement by the contractor that a DBE should use a specific vendor or supplier to meet their subcontractor specifications;
- f. Whether there is a requirement that a DBE use the contractor’s negotiated price;
- g. The independence of the DBE;
- h. Whether approval has been sought prior to use of a Joint Check arrangement;

- i. Whether any approved Joint Check arrangement has exceeded a reasonable period of use;
- j. The operation of the Joint Check arrangement; and
- k. Whether the DBE has made an effort to establish alternate arrangements for following periods (i.e., the DBE must show it can, or has, or why it has not, established or increased a credit line with the vendor or supplier).

Even with the use of a Joint Check, both the contractor and DBE remain responsible for compliance with all other elements under 49 CFR § 26.55 (c) (1), and must still be able to prove that a commercially useful function is being performed for the contractor.

Procedure

The following procedure will apply if the Authority allows the use of a Joint Check arrangement.

- a. The contractor will submit requests for approval to the Authority, using the Authority’s approved DBE Joint Check Arrangement Approval Form (Document 030), (Attachment #5) as **Form F: DBE Joint Check Arrangement Approval Form**, and any other relevant documents. Requests that are not initiated during the Bid / proposal process should be made in writing and comply with the procedure;
- b. The Authority’s Office of Diversity and Civil Rights will review each request and render a decision as part of the approval process for DBE Schedules and Letters of Intent;
- c. Review and Approval will be project specific and relevant documents will be made part of the project contract file;
- d. Payments should be made in the name of both the DBE and the vendor or supplier; Payments should be issued and signed by the contractor as only the guarantor for prompt payment of purchases to the vendor or supplier. The payment to the vendor or supplier should be handled by the DBE (i.e., if possible, funds or the Joint Check should be processed by the DBE and sent by the DBE to the vendor or supplier);
- e. The Authority may request copies of cancelled checks (front and back) and transmittal information to verify any payments made to the DBE and vendor or supplier; and
- f. The Authority may request other information and documents, and may ask questions of the contractor, subcontractor and vendor or supplier prior to, during, and after the project performance to ascertain whether the subcontractor is performing a commercially useful function and all parties are complying with DBE Program policies and procedures as part of the subcontractor approval process.

Sanctions

If the contractor does not comply with the terms of these Provisions and cannot demonstrate to the satisfaction of the Authority that good faith efforts were made to achieve such compliance, the Authority may, in addition to any other remedy provided for in the contract, and notwithstanding any other provision in the contract, use any of the sanctions available under federal law, including but not limited to 49 CFR §26, Massachusetts law or this contract, including by not limited to:

- A. Withholding monthly progress payments;
- B. Assessing liquidated damages;

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

- C. Disqualify the contractor from future Bidding as non-responsible;
- D. Retaining, in connection with final acceptance and final payment processing, an amount determined by multiplying the total contract amount by the percentage in Section 6.2.21.5 DBE Participation, less the amount paid to approved DBE(s) for work performed under the contract in accordance with the provisions of 49 CFR Part 26;
- E. Suspending, terminating or canceling this contract, in whole or in part, and call upon the contractor's surety to perform all terms and conditions in the contract;
- F. Referring the contractor for debarment proceedings pursuant to M.G.L. c. 29 § 29F and, as applicable, 2 CFR Parts 180, 215 and 1,200;
- G. Referring the matter to the Massachusetts Attorney General for review and prosecution, if appropriate, of any false claim or pursuant to M.G.L. c. 12, §§ 5A to 5O (the Massachusetts False Claim Act);
- H. Referring the matter to the USDOT's Office of the Inspector General, the United States Department of Justice or other agencies for prosecution under Title 18, U.S.C. § 1001, 49 CFR Parts 29 and 31, and other applicable laws and regulations; and
- I. Assessing other sanctions consistent with 49 CFR Part 26.

Further Information; Enforcement, Cooperation and Confidentiality

- A. Any proposed DBE, Bidder / proposer, or contractor shall provide such information as is necessary in the judgment of the Authority to ascertain its compliance with the terms of these Provisions.
- B. Any proposed DBE, Bidder / proposer, or contractor must comply with 49 CFR § 26.107, which outlines the enforcement actions that apply to firms.
- C. Any proposed DBE, Bidder / proposer, or contractor must comply with 49 CFR § 26.109, which outlines the rules governing information, confidentiality, cooperation, and intimidation or retaliation.

9.26. Terms & Conditions Signature

IN WITNESS WHEREOF, the Contractor certifies under the pains and penalties of perjury that it shall comply with these MBTA Terms and Conditions under Section 9 for any applicable Contract executed with the MBTA as certified by their authorized signatory below:

Contractor Authorized Signatory: _____

Print Name: _____

(BLOCK LETTERS)

Title: _____

Date: _____

(check one)

Organization _____

Individual _____

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

Full legal Organization or Individual Name:		[]	
Doing Business As Name (If Different):		[]	
Tax Identification Number:		[]	
Address:		[]	
Phone:	[]	Fax:	[]

10. TECHNICAL RESPONSE

10.1. Technical Response Submission

Section 1.9 details the process and specific requirements for bidder responses. Responses are due electronically on COMMBUYS.

Bidders responding to this RFP must fully complete and submit all Technical Response Components listed in Section 10.2. Bidders shall not: (1) leave any section of a form blank; (2) mark any section of a form not applicable (N/A); (3) make reference to other documents; or (4) make any response conditional.

The MBTA reserves the right to request additional information for clarification purposes, either written or oral, from Bidders prior to award.

10.2. Technical Response Components

To be considered complete, the Bidder’s Technical Response must include:

10.2.1. Attachment 2: Technical Response Cover Letter

Bidders should submit an electronic copy of the Technical Response Cover Letter. The MBTA reserves the right to request the original signed copy.

10.2.2. Signed Documents

A certified copy of resolution, by-law, or Power-of-Attorney authorizing an Officer or Agent to sign on behalf of the Bidder must accompany the Proposal and any Contract which may ensue. A scanned copy should be provided through COMMBUYS, with the original document available upon request from the MBTA.

1. If a Proposal is made by a foreign corporation, evidence of compliance with Massachusetts General Laws, c. 156D and 950 CMR 113.48 (foreign corporation certificate of registration) and 113.57 (annual report) must be given.
2. If a Proposal is made by two or more individuals, partnerships, or corporations, or any combination of these operating for the purpose of this Proposal as a Joint Venture, each party joining to make the Proposal must submit, attach to and make part of the Proposal, information and signatures in compliance with the foregoing provisions applicable to an individual, firm, partnership, or corporation.
 - a. In addition, if any of the Joint Venture is a corporation, an attested copy of the vote of the corporation authorizing such Joint Venture must be attached to the proposal.
3. Bidders should submit scanned copies of the Signed Documents in COMMBUYS and retain the originals. The MBTA reserves the right to request the original, signed documents.

10.2.3. Attachment 3: Technical Response Certifications

Attachment 3 contains the certifications, affidavits, and other forms that must be included with Bidder’s Technical Response, including:

1. Certification: Buy America

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

2. Certification: Pre-Award/Post-Delivery Audits of Rolling Stock
3. Non-Collusion Affidavit
4. Certification: Debarment, Suspension, and Other Responsibility Matters
5. Certification: Debarments, Suspension, and Other Responsibility Matters for Lower Tier Participant
6. Certification: Lobbying
7. Non-Discrimination Affidavit
8. Certification: Compliance with Drug & Alcohol Programs
9. Certification: Performance Guarantee
10. Certification: Final Assembly

Bidders should submit a scanned copy of Attachment 3 with their response and retain the originals. The MBTA will require the original signed documents prior to contract award.

10.2.4. Attachment 4: Disadvantaged Business Enterprise Certifications

Please see Section 9.25 and the instructions in Attachment 4. Bidders should submit a scanned copy of Attachment 4 with their response and retain the originals. The MBTA will require the original signed documents prior to contract award.

10.2.5. Signed Contract Terms and Conditions

Please see Section 9.26. Bidders should submit a scanned copy of the Contract Terms and Conditions with their response and retain the originals. The MBTA will require the original signed documents prior to contract award.

10.2.6. Proof of Insurance

The Bidder shall include proof of insurance consistent with the requirements of Section 3.2.

10.2.7. Financial statements

Bidders shall provide three years of audited financial statements and most recent audited quarterly financial statements, if any.

10.2.8. Introduction

1. An introductory letter addressed to (and submitted via COMMBUYS):

Aidan Flynn
Massachusetts Bay Transportation Authority
10 Park Plaza, Suite 2810

Boston, Massachusetts 02116

2. An introduction of the prime contractor, members of a partnership, joint venture, or other teaming arrangement, whichever is applicable, and an introduction of all major subcontractors/subconsultants who may be involved in the performance of the work; and
3. A discussion of the primary business experience, length of time in business, ownership, office locations, specific location of the principal office from where the main work will be performed, contact information (i.e., contact names, telephone and facsimile numbers, and email addresses), and other information introductory in nature for each firm involved in making the proposal.

10.2.9. Technical Proposal, in the sections noted below:

The Technical Proposal must be no more than 80 double-sided pages of text, visuals, and attachments, and must not exceed the page limit for each Tab as specified. It must be inserted into a 3-ring binder(s) and tabbed as noted below, and contain the information requested below.

1. Tab 1: Technical Approach (20 double-sided pages maximum, not including drawings)
 - a. Provide an organization chart of proposed project staff, at a minimum showing the key personnel listed in Section 5.3 (including names, titles, and reporting structure for each).
 - i. For each of those key personnel, provide a one-paragraph resume to present the proposed candidate's credentials and experience as they directly apply to the project.
 - b. Identify the tools and personnel you will use to manage the Contract and Technical Specification requirements and ensure they are allocated and tracked throughout the project.
 - c. Identify the location at which design and overhaul work will be performed, and expected staffing at this location for Contractor and Subcontractor representatives from NTP to end of Warranty. Indicate where technical and field staff would be located for warranty service.
 - d. Describe how you will manage Subcontractors/Suppliers and oversee their performance and compliance with Contract requirements. Identify related risks and outline mitigations to be used.
 - e. For the major components of the vessel overhaul, provide:
 - i. A description of the approach design/re-design/refurbishment
 - ii. Subcontractor(s) and suppliers that are anticipated to be involved
 - iii. The type of equipment being considered for installation on the MBTA's vessels, and where and in what quantities similar equipment is in use. Indicate where this equipment will be manufactured and assembled.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

- iv. Development of manuals, and other support documentation
- v. Training approach

Major components of the vessel overhaul include:

- i. Ripouts and removals
 - ii. Fiberglass hull repairs
 - iii. Other structural repairs
 - iv. Main engines
 - v. Reverse/reduction gear
 - vi. Waterjet
 - vii. Steering control system
 - viii. Gensets
 - ix. HVAC
 - x. Navigation Electronics
 - xi. Tanks
 - xii. Windows, Doors & Hatches
 - xiii. Interior outfitting
 - xiv. Exhaust System
 - xv. Electrical Systems
 - xvi. Piping
 - xvii. Passenger Information System
 - xviii. CCTV
- b. Present a preliminary plan to ensure systems integration between vessel systems through design, manufacture, and testing.
 - c. Provide an overview of your proposed project-specific System Safety Program (SSP).
 - d. Describe how accessibility elements will be verified and where necessary, modified to meet the requirements including the Americans with Disabilities Act, and the Passenger Vessel Accessibility Guidelines (PVAG).
 - e. Provide a sample Drawing Package with a Size D (22” x 34”) drawing of each of:

- Main Deck arrangement,
- Upper Deck arrangement, including the Pilot House,
- Equipment voids, including both port and starboard hulls, and
- Outboard profile.

These drawings shall demonstrate the Offeror’s design and drawing capabilities, and as such may provide a conceptual view of the Authority’s vessels after overhaul or may be a sample from a similar contract previously performed by the Offeror.

2. Tab 2: Manufacturing & Schedule (12 double-sided pages maximum)

- a. Describe the methods that will be used to inspect and repair the fiberglass hulls, decking, and superstructure as well as the methods to be used for completing the scope of work on other major components and systems. Describe how rip-outs and removals will be performed.
- b. Describe where and how removed material and new material will be stored, inventoried, labeled and protected prior to re-installation/installation into the overhauled vessel.
- c. List the work to be performed by the prime contractor and the location(s) at which this work will be performed. If major work is to be performed by subcontractors, identify that work, and the applicable subcontractor name(s) and work location(s).
- d. Describe plant capacity and indicate the capacity available for work under this contract while satisfying other commitments. This includes the Contractor and any subcontractors. List all other work taking place at that location during the Contract period, including the customer, quantity and type of vehicle, and delivery dates. Provide a statement that the contractor, and major subcontractors if applicable, have the capacity, personnel and other resources to overhaul the vessel specified in this document within the time proposed and with content that complies with Federal Buy America requirements.
- e. Identify the final assembly Contractor and location. Outline sample assembly procedures and controls, and material control program. Describe the approach for preparation of workflow plans, schedules, procedures, quality control, and material control at the final assembly location.
- f. Describe locations to be used for vessel testing (including pre-overhaul testing and inspections, dock trials, sea trials, post delivery trials and any other testing that the Contractor intends to perform). Describe the mobilization plan and approach for conducting this testing including any outside vendors, regulatory bodies, agencies or outside testing companies that will be involved. Provide a preliminary indication of test sequencing. Describe methods by which test results will be cycled through the design process to ensure that necessary modifications are implemented on both vessels.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

- g. Provide a preliminary Commissioning and Delivery, Plan. Describe the expected conveyance and route by which the vessels will be shipped from the Authority to the overhaul site and return shipping to an Owner-designated marine facility in the Owner’s service area. Transportation to subcontractor facilities, if applicable, shall also be described. Indicate methods to be used to protect the vessels while in transit.
 - h. Provide a proposed Master Program Schedule spanning all project phases and showing major aspects, events, deliverables, and milestones of the program.
 - i. Explain your philosophy of planning, logistics, design review, submittals, and Supplier/Subcontractor management as it relates to adherence to the project schedule.
 - j. Describe risks to the project schedule and how you will manage them.
 - k. Describe the expected conveyance and route by which the vessels will be shipped from the Authority to the overhaul site, and return shipping to an Owner-designated marine facility in the Owner’s service area. Transportation to subcontractor facilities, if applicable, shall also be described. Indicate methods to be used to protect the vessels, or portions thereof, while in transit.
3. Tab 3: Past Performance & Experience (5 double-sided pages maximum)
- a. Indicate your experience with the overhaul or repair of ferries similar to the work required by this Contract, particularly with fiberglass hulls. Contractor may also include contracts under which construction of new ferries or other vessels included elements of the work required for this overhaul.
 - b. Provide a matrix of all your ferry overhaul and manufacture contracts active at any point in the past 10 years, including for each:
 - 1. Customer
 - 2. Customer Contact Name and Contract Number
 - 3. Vessel Type
 - 4. Vessel description (dimensions, capacity, features, existing or new design)
 - 5. Quantity of Vessels
 - 6. Major Vendors/Suppliers
 - 7. Contractual and actual delivery schedule of first and last vessel
 - 8. Contractual and actual vessel top speed
 - 9. Extent of your role in the Contract design and overhaul responsibility (i.e., total vessel including hull and all systems, hull only, systems only, etc.).
 - c. For each proposed Supplier/Subcontractor provide the following:
 - 1. Name
 - 2. Location
 - 3. DBE Status
 - 4. Description of experience with the system(s) proposed for the Authority’s vessels

4. Tab 4: Quality Assurance Plan (10 double-sided pages maximum)

- a. Provide an overview of your Quality Assurance approach, including quality organization, sample procedures, sample documentation, outline of QA Plan, and feedback mechanisms.
- b. The Offeror is to provide an outline of the Quality Assurance requirements stipulated in Section 0.3.3 of the Technical Provisions. The outline should include details of approach, organization, sample procedures, sample documentation, and feedback mechanisms. Include quality control/quality assurance role at the final assembly site. The outline shall also include quality control of subcontractor work.

10.2.10. Exceptions, if any

Any Exceptions must be specifically related to a paragraph and/or specific part of the solicitation or technical specification. Bidder shall provide rationale in support of the exception and fully explain its impact, if any, on the performance, schedule, cost, and specific requirements of the solicitation.

Provide the rationale in table format including the content detailed below. **Failure to comply with the terms and conditions and technical requirements of the solicitation may result in the Bidder being removed from consideration for contract award.**

Solicitation Document	Paragraph/Page	Requirement	Rationale	Benefit to MBTA	Impacts On
RFP, Specifications, Exhibits, Attachments, Amendment	Applicable Document, Page, Section, Paragraph, Sentence	Identify the requirement or portion to which the exception is taken	Bidder's justification why the requirement will not be met and its alternative strategy or position	Include the benefit to MBTA if the proposed alternate strategy or position is approved	Schedule, Cost, Performance, Other

10.2.11. Promotional Literature

Bidders may provide up to eight (8) pages of promotional literature. If provided, this will not be used to score or rank proposals.

11. PRICE PROPOSAL

11.1. Price Proposal Submission

Section 1.9 details the process and specific requirements for bidder responses. Responses are to be submitted to the MBTA electronically through COMMBUYS.

RFP NO. 122F-20 OVERHAUL OF TWO (2) 149 PASSENGER SUBCHAPTER “T” FERRIES

The MBTA reserves the right to request additional information for clarification purposes, either written or oral, from Bidders prior to award.

11.2. Tax Exemption

The MBTA is exempt from Federal Excise Tax, including Transportation Tax, and will furnish properly executed tax exemption certificates upon request. The MBTA is also exempt from Massachusetts State Sales Tax -- Exemption Number E-042-323-989. Such taxes should not be included in Proposal prices.

As an independent Contractor, the Contractor alone shall be responsible for payment of all federal, state and local taxes of all types and kinds applicable to such fees incurred under this Agreement.

11.3. Price Proposal Components

Bidders responding to this RFP must fully complete and submit **Attachment 5: Price Proposal**. Bidders shall not: (1) leave any section of the form blank; (2) mark any section of the form not applicable (N/A) unless specifically called for in the instructions; (3) make reference to other documents unless specifically called for in the instructions; or (4) make any response conditional.

Bidders must submit their Price Proposal separately from their Technical Response. If the bidder elects to submit the Price Proposal in PDF format, a version in Excel must also be provided as a separate file through COMMBUYS.